



## **EMERGENCY GENERATORS AGREEMENT**

(FEMA funding)  
(version 2/25/2026)

This AGREEMENT (“Agreement”) is entered by and between **Click or tap here to enter text.** (“Professional”), located at **Click or tap here to enter text.** and the **City of League City** (the “City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

### **Terms:**

1. **Scope of Services:** Professional will perform the services as set forth in Exhibit A, which is attached and incorporated herein, and which can be generally described as delivery and installation of four (4) emergency generators (the “Work”). **Time is of the essence.** Professional shall **deliver and fully install** each of the four (4) emergency generators, including all associated components and appurtenances, and shall achieve operational status for each unit (as further described in Exhibit A), **on or before June 4, 2026** (the “Mandatory Completion Date”). If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **March 17, 2026** and shall expire on **July 5, 2026.**
  - 2.1. **Termination for Cause:** City may terminate this Agreement immediately upon written notice to the Professional if: (a) Professional materially breaches any of its obligations under this Agreement and fails to remedy the breach within seven (7) days after receiving written notice from City, (b) Professional becomes insolvent, files for bankruptcy, or is subject to any similar legal proceeding.
  - 2.2. **Termination for Convenience:** City may terminate this Agreement for convenience upon seven (7) days’ written notice. Upon termination for convenience, City shall pay Professional **only** for Units that achieved Unit Completion and City written acceptance **on or before** the effective termination date, in accordance with Section 4. City shall not be liable for unperformed work, lost profits, or costs incurred after notice that could have been avoided or mitigated.
  - 2.3. **Survival of Warranties.** Notwithstanding the expiration or termination of this Agreement for any reason, all warranties provided by Professional under this Agreement or in Exhibit A, including without limitation any manufacturer warranties, installation warranties, performance warranties, and corrective obligations, shall survive such expiration or termination and shall remain in full force and effect in accordance with their stated terms. Termination of this Agreement shall not relieve Professional of any obligation to honor, service, or enforce such warranties.
3. **Mandatory Completion; Condition Precedent to Payment; Automatic Termination**

- 3.1. **Mandatory Completion Date; Time is of the Essence.** Professional acknowledges and agrees that time is of the essence. Professional shall deliver and fully install all four (4) emergency generators, including all associated components necessary for operational use, on or before June 4, 2026 (the “Mandatory Completion Date”).
- 3.2. **Condition Precedent to Payment.** Full delivery, complete installation, operational readiness, and City acceptance of each generator on or before the Mandatory Completion Date are express **conditions precedent** to City’s obligation to pay for that generator. Delivery only, partial installation, staging, storage on City property, or substantial completion shall not entitle Professional to payment.
- 3.3. **Automatic Termination as to Incomplete Units; Closeout.** If Professional fails to achieve Unit Completion and City written acceptance for any Unit by the Mandatory Completion Date (a “Mandatory Completion Failure”), then, as of the Mandatory Completion Date: (a) this Agreement shall automatically terminate solely with respect to each Unit that has not achieved Unit Completion and City written acceptance (each, an “Incomplete Unit”), without the necessity of further notice; and (b) this Agreement shall remain in effect solely for purposes of (i) payment for any Unit that achieved Unit Completion and City written acceptance on or before the Mandatory Completion Date (subject to Section 4), (ii) removal/restoration obligations under Sections 3.5 and 3.6 for any Incomplete Unit, and (iii) any other provisions that by their nature are intended to survive for closeout and compliance
- 3.4. **No Payment for Nonconforming Work.** Upon a Mandatory Completion Failure, City shall have no obligation to pay for any generator, or any portion of the Work, that has not been fully delivered, fully installed, operational, and accepted by City on or before the Mandatory Completion Date. City’s obligation to pay for any Unit that achieved Unit Completion and acceptance on or before the Mandatory Completion Date is not affected by such Mandatory Completion Failure, subject to Professional’s submission of a compliant invoice under Section 4. City shall not be liable for any costs associated with undelivered equipment, partially installed equipment, labor, materials, mobilization, storage, freight, or other related expenses attributable to any Unit that did not achieve Unit Completion.
- 3.5. **Removal at Professional’s Sole Expense.** Within seven (7) calendar days after the Mandatory Completion Date (or sooner if requested by City for safety or operational reasons), Professional shall remove from City property any equipment, generators, materials, or partially completed work not fully installed and accepted. Professional shall bear all costs of demobilization, loading, transportation, return shipment, and removal.
- 3.6. **Restoration of Site.** Professional shall restore affected site(s) to substantially the condition existing prior to commencement of the Work, reasonable wear and tear excepted, and shall repair any damage caused by removal.
- 3.7. **Title; Risk of Loss Prior to Acceptance.** Title to each generator, and all associated materials and equipment for that Unit, shall not pass to City until Unit Completion and City written acceptance of that Unit. Risk of loss or damage to the generator, materials, and Work for each Unit prior to City written acceptance shall remain with Professional, consistent with Section 27. Delivery, staging, storage, or temporary presence of any equipment on City property does not constitute acceptance and does not transfer title.

3.8. **No Waiver.** City's inspection of work, partial payments (if any), or allowance of equipment on site shall not waive the Mandatory Completion Date or any rights under this Section.

4. **Compensation; Unit-by-Unit Payment; Condition Precedent.**

4.1. **Not-to-Exceed Amount.** Professional shall be paid for the services as set forth in Exhibit A. In no event shall total compensation exceed \$\_\_\_\_\_ during the term of this Agreement.

4.2. **Unit-by-Unit Payment Trigger; Unit Completion Defined.** The Parties agree that the Work consists of four (4) separately compensable deliverables (each, a "Unit"), corresponding to each emergency generator and its associated delivery and installation. "Unit Completion" means, for a given Unit, that the generator and all associated components and appurtenances required by Exhibit A have been (i) delivered to the applicable site, (ii) fully installed and integrated, (iii) commissioned and demonstrated operational in accordance with Exhibit A, (iv) all Unit-specific deliverables required by Exhibit A (including any manuals, warranties, as-builts, or commissioning documentation specified therein) have been delivered, and (v) the Unit has been accepted in writing by City. City shall pay only for Units that achieve Unit Completion in accordance with this Agreement

4.3. **Condition Precedent; No Payment for Delivery-Only or Partial Installation.** Unit Completion on or before the Mandatory Completion Date is a condition precedent to City's obligation to pay for that Unit. Mere delivery, staging, storage on City property, partial installation, or substantial completion does **not** constitute Unit Completion and **does not** entitle Professional to payment for that Unit. Professional acknowledges that City's payment obligations are conditioned on Unit Completion and acceptance as described herein, including to ensure allowability and reimbursement under applicable FEMA requirements.

4.4. **Invoice and Payment Timing.** Professional may submit an invoice only after Unit Completion for the applicable Unit. Each invoice must (a) identify the specific Unit, (b) include details and dates of service, and (c) include any acceptance documentation required by Exhibit A. Payment will be made within thirty (30) days of receipt of a compliant invoice, except for any portion City disapproves in City's sole reasonable discretion as not compliant with this Agreement. If City disapproves any amount, City shall provide specific reasons for disapproval in writing.

4.5. **Effect of Mandatory Completion Failure.** Notwithstanding anything to the contrary in this Agreement, City shall have no obligation to pay for any Unit that does not achieve Unit Completion and City acceptance on or before the Mandatory Completion Date. Amounts properly due for Units that achieved Unit Completion and acceptance on or before the Mandatory Completion Date shall remain payable in accordance with Section 4.4. Professional shall comply with Sections 3.5 and 3.6 regarding removal and restoration for any Unit that did not achieve Unit Completion and acceptance.

5. **Payment Bond; Performance Bond**

5.1. **Bond Requirement and Timing.** Professional shall, at its sole cost, furnish to City a Performance Bond conditioned upon faithful performance of this Agreement and a Payment

Bond conditioned upon payment of all persons supplying labor, materials, equipment, and supplies in connection with the Work, each in the full amount of the total contract price. Such bonds shall be furnished within fourteen (14) calendar days after issuance of the Notice to Proceed and in all events prior to commencement of any on-site Work. No Work shall begin until City has reviewed and accepted the bonds. Notice to Proceed means City's written authorization for Professional to commence on-site Work.

- 5.2. **Statutory Compliance and Form.** The bonds shall comply with Chapter 2253, Texas Government Code, shall be executed by a corporate surety authorized and admitted to do business in the State of Texas, and shall be in a form acceptable to City. The bonds shall remain in effect through final completion and acceptance of the Work.
- 5.3. **Failure to Provide Bonds; No Limitation of Remedies.** Failure to furnish or maintain the required bonds shall constitute a material breach of this Agreement and shall entitle City to terminate this Agreement for default without liability. The furnishing of bonds shall not limit Professional's obligations under this Agreement nor limit City's rights or remedies in the event of breach.
6. **Insurance:** Professional is required during the Contract Term to maintain insurance as set forth below: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; (c) Professional must have Worker's Compensation coverage with statutory limits for the State of Texas, and (d) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Professional shall provide City Certificates of Insurance evidencing these insurance requirements within fourteen (14) calendar days after issuance of the Notice to Proceed and in all events prior to commencement of any on-site Work.
7. **Liquidated Damages.** Professional acknowledges that certain time-specific obligations under this Agreement, including warranty response, repair obligations, and other post-acceptance performance requirements expressly identified in this Agreement or Exhibit A, are critical to City operations. If Professional fails to meet any such time-specific obligation after Unit Completion and City written acceptance of the applicable Unit, and such failure continues beyond any applicable cure period, Professional shall be liable for liquidated damages in an amount equal to one-tenth of one percent (0.1%) of the compensation allocated to the affected Unit per calendar day for each calendar day of noncompliance until the obligation is satisfied. The Parties agree that City's damages resulting from such delay would be difficult to precisely determine, that the liquidated damages stated herein represent a reasonable estimate of probable damages and are not a penalty, and that such liquidated damages are in addition to, and do not limit, City's rights to termination, offset, or other remedies expressly provided in this Agreement. Liquidated damages may be deducted from amounts otherwise due to Professional or recovered as permitted by law.
8. **Remedies for Breach by Professional.**

- 8.1. Breach of Contract by Professional. If the Professional violates or breaches any term, condition, or provision of this Agreement, the following remedies may be pursued by the non-breaching Party, as appropriate:
- 8.1.1. Administrative Remedies. In the event of a breach, City may impose administrative remedies, which may include but are not limited to: i. Suspension of Performance: City may suspend any or all of its obligations under this Agreement, including withholding payment or refusing to approve invoices, until the breach is remedied or resolved. ii. Corrective Action: City may require the Professional to take corrective actions, including repairing, replacing, or rectifying the work or services that do not conform to the terms of the Agreement, at the Professional's sole cost and expense. iii. Replacement of Professional Personnel: If the breach is related to the performance of the Professional's personnel, City may require the removal and replacement of the personnel involved in the breach at no cost to the non-breaching Party.
- 8.1.2. Contractual Remedies and Penalties. In the event of a breach by the Professional, City may invoke the following contractual remedies and penalties, as applicable: i. Liquidated Damages: The Professional agrees to pay liquidated damages as outlined in this Agreement, which shall apply if the Professional fails to meet the agreed deadlines, performance standards, or other critical contractual obligations. The Parties agree that the liquidated damages are a reasonable estimation of the loss incurred due to such breach. ii. Termination for Default: In the event of a material breach that is not cured within seven (7) days of written notice, City may terminate this Agreement for default. Such termination shall be effective immediately upon the expiration of the cure period, and City shall be entitled to recover damages resulting from the breach. iii. Right to Offset: City may offset any amounts owed to the Professional under this Agreement by the amount of any penalties, costs, or damages incurred as a result of the Professional's breach.
- 8.1.3. Legal Remedies. In the event of a breach by the Professional, City reserves the right to pursue any legal remedies available under applicable law, including but not limited to: i. Claims for Damages: City may seek compensatory damages for any losses, costs, or expenses incurred as a result of the Professional's breach. ii. Injunctive Relief: City may seek injunctive relief to prevent or restrain the Professional from continuing its breach, including but not limited to orders for specific performance or a prohibition on further violations. iii. Legal Action: City may initiate legal proceedings, including but not limited to arbitration or litigation, to resolve the dispute and seek any remedies available under law.
- 8.2. Sanctions and Penalties. The Professional acknowledges that any violation of the terms and conditions of this Agreement may result in sanctions or penalties, including but not limited to: a. Disqualification from Future Work: The Professional may be disqualified from being awarded future contracts or work opportunities with the non-breaching Party, either temporarily or permanently, at the discretion of the non-breaching Party. b. Blacklist: If the breach involves fraudulent, unethical, or illegal conduct, the Professional may be placed on a blacklist, which may prevent the Professional from engaging in any future contractual relationships with City or its affiliates.

- 8.3. **Cumulative Remedies.** The remedies set forth in this section are cumulative and not exclusive. City may exercise any or all available remedies (administrative, contractual, or legal) in any order or combination, and the exercise of one remedy shall not preclude City from exercising others.
- 8.4. **Notice of Breach.** City shall provide written notice to the Professional detailing the breach and specifying the applicable remedy or penalty. The Professional shall have seven (7) days from receipt of such notice to cure the breach, unless otherwise specified.
9. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
10. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the "Work") for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City's discretion. If the Work would not be considered a work-for-hire under applicable law, Professional hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City's discretion. Professional shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Professional hereby waives and appoints City to assert on Professional's behalf Professional's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City's purposes.
11. **Confidentiality:** During the course of the services to be provided under this Agreement, Professional may become privy to confidential information of City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Professional shall promptly notify City of any misuse or unauthorized disclosure of City's confidential information and upon expiration of this Agreement shall return to City all confidential information in Professional's possession or control. Professional shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Professional without the prior written approval of City.
12. **Warranties and Representations:** Professional warrants and agrees that Professional shall perform its services and conduct all operations in conformity with all applicable federal, state, and

local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Professional warrants and agrees that Professional will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

13. **Licenses/Certifications:** Professional represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Professional's performance of this Agreement. If Professional is a business entity, Professional warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Professional.
14. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
15. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
16. **INDEMNIFICATION: PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL OR THE PROFESSIONAL'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL. HOWEVER, PROFESSIONAL SHALL NOT BE REQUIRED TO DEFEND THE CITY AGAINST CLAIMS BASED WHOLLY OR PARTLY ON THE NEGLIGENCE, FAULT, OR BREACH OF CONTRACT BY THE CITY, THE CITY'S AGENT, THE CITY'S**

## **EMPLOYEE, OR OTHER ENTITY OVER WHICH THE CITY EXERCISES CONTROL.**

17. **Force Majeure:** Neither party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's exercise of due diligence. This section does not extend the Mandatory Completion Date.
18. **Notices:** Any notice given under this Agreement by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.
19. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Professional certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
20. **State Auditor:** Professional understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
21. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
22. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
23. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
24. **Eligibility to Receive Payment:** Professional certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.

25. **Payment of Debt/Delinquency to State:** Professional certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
26. **Products and Materials Produced in Texas:** Professional should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
27. **Risk of Loss:** All work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work will be Professional's responsibility. This Section is supplemental to Section 3.7 and does not alter the title and acceptance provisions therein
28. **Publicity:** Professional shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
29. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
30. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
31. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
32. **Authority:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. Professional warrants and represents

that Professional has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.

33. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Professional. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
34. **Equal Employment Opportunity:** During the performance of this contract, the Professional agrees as follows:
- 34.1. Professional will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Professional 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. Professional 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.
- 34.2. Professional will, in all solicitations or advertisements for employees placed by or on behalf of Professional, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 34.3. Professional 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 Professional's legal duty to furnish information.
- 34.4. Professional 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 Professional's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 34.5. Professional 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.

- 34.6. Professional 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.
- 34.7. In the event of Professional's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Professional may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 34.8. Professional will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) 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. Professional 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 Professional becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Professional may request the United States to enter into such litigation to protect the interests of the United States.
- 34.9. Professional agrees that it will be bound by the above Equal Opportunity Clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- 34.10. Professional agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity Clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- 34.11. Professional further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity Clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Professional

agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

35. **Davis-Bacon Act:** If applicable but not federally required for procurements under FEMA's Public Assistance or Hazard Mitigation Assistance Programs and in addition to the requirements of this agreement, the Professional must do the following:

35.1. Professional must comply with all requirements in 29 C.F.R. § 5.5(a)(1)-(11), which are incorporated into this Agreement by reference.

35.2. Professional must place a copy of the Department of Labor's current prevailing wage determination in each solicitation. Contracts or subcontracts must be awarded on the condition that the prevailing wage determination is accepted. The Professional must report all suspected or reported violations to the federal agency.

35.3. Contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland "Anti-Kickback" Act. According to 29 C.F.R. § 5.5(a)(5), the regulatory requirements for the Copeland "Anti-Kickback" Act are incorporated by reference into the required contract provision, so a separate contract provision is not necessary. However, the Professional may include a separate contract provision specific to the Copeland "Anti-Kickback" Act.

35.4. Per Department of Labor's implementing regulations for the Davis-Bacon Act, the Professional's contractors and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(11) into any subcontracts.

35.5. Professional must follow the other requirements of the Davis-Bacon Act and implementing regulations. If applicable per this section described above, the Professional must include provisions at 29 C.F.R. § 5.5(a)(1)-(11) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

36. **Copeland "Anti-Kickback" Act:** If applicable for all prime construction contracts above \$2,000 when the Davis-Bacon Act also applies, the Professional must do the following:

36.1. Professional shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

36.2. Professional shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Professional shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these contract clauses.

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

36.4. Professional must provide weekly reports of the wages paid during the prior week's payroll period to each employee covered by the Copeland "Anti-Kickback" Act and the Davis-Bacon Act.

37. **Compliance with the Contract Work Hours and Safety Standards Act:** This section is If applicable for all procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work; not including the purchase of supplies, materials, or articles ordinarily available on the open market, contracts for transportation or transmission of intelligence.

37.1. Overtime requirements: No Professional 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.

37.2. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (a) of this section Professional and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such Professional 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 watchpersons and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$32 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.

37.3. Withholding for unpaid wages and liquidated damages.

37.3.1. Withholding Process. The applicable federal agency or grant recipient shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the Professional or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this contract, any other federal contract with the same Professional, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same Professional. The necessary funds may be withheld from the Professional under this contract, any other federal contract with the same Professional, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same Professional, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Professional's liability for which the funds were withheld.

37.3.2. Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- 37.3.2.1. Professional's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- 37.3.2.2. A contracting agency for its reprocurement costs;
- 37.3.2.3. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of the Professional, or Professional's bankruptcy estate;
- 37.3.2.4. A Professional's assignee(s);
- 37.3.2.5. A Professional's successor(s); or
- 37.3.2.6. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

37.4. Subcontracts: Professional or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (e) of this section and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime Professional shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (e) of this section." In the event of any violations of these clauses, Professional, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

37.5. Anti-Retaliation: It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- 37.5.1. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act or its implementing regulations in this part;
- 37.5.2. Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under Contract Work Hours and Safety Standards Act or this section;
- 37.5.3. Cooperating in any investigation or other compliance action, or testifying in any proceeding under Contract Work Hours and Safety Standards Act or this section; or
- 37.5.4. Informing any other person about their rights under the Contract Work Hours and Safety Standards Act or this section.

37.6. Professional must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of three years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid.

37.7. Records to be maintained under this provision must be made available by the Professional or subcontractor for inspection, copying, or transcription by authorized

representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job."

### 38. Rights to Inventions

- 38.1. Applicability. This provision applies only if the FEMA award meets the definition of "funding agreement" and the recipient or subrecipient enters any contract involving substitution of parties, assignment, or performance of experimental, developmental, or research work under that funding agreement, then the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.
- 38.2. Definitions
- 38.2.1. "Subject Invention" means any invention of the Professional conceived or first actually reduced to practice in the performance of work under this contract.
- 38.2.2. "Professional" means the party to this contract who is performing the work.
- 38.3. Professional shall disclose each Subject Invention to the Federal Agency within two months after the inventor discloses it in writing to Professional personnel responsible for patent matters.
- 38.4. Professional shall elect in writing whether or not to retain title to any such invention by notifying the Federal Agency within two years of disclosure. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
- 38.5. Professional shall file its initial patent application on a Subject Invention within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. Professional shall file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner for Patents to file foreign patent applications when such filing has been prohibited by a Secrecy Order.
- 38.6. The Federal Agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.
- 38.7. The Federal Agency has the right to require Professional to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Professional refuses such a request, to grant such a license itself if the Federal Agency determines that such action is necessary because Professional has not taken effective steps to achieve practical application of the Subject Invention.
- 38.8. Professional agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States, unless a waiver is granted by the Federal Agency.

39. **Clean Air Act:** For Contracts and subcontracts greater than \$150, Professional agrees: 1) to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., 2) to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the appropriate state agency, Federal Emergency Management Agency, and the appropriate

Environmental Protection Agency Regional Office; and 3) to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

40. **Federal Water Pollution Control Act:** Professional agrees: 1) to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., 2) to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the appropriate state agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office and 3) to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

41. **Debarment and Suspension:** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Professional is required to verify that none of Professional's employees, 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).

41.1. Professional must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

41.2. This certification is a material representation of fact relied upon by the City. If it is later determined that Professional did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

41.3. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

42. **Byrd Anti-Lobbying Amendment:**

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

42.2. If applicable, Professional must sign and submit the following certification to the City with each bid or offer exceeding \$100,00: Appendix A, 44 C.F.R. Part 18 - Certification regarding lobbying (Certification for Contracts, Grants, Loans, and Cooperative Agreements).

42.2.1. The undersigned certifies, to the best of his or her knowledge and belief, that: (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the

undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

42.2.2. At the end of the certification language, the following language must be used: "The Professional, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Professional understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any."

#### **43. Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

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

43.2. Prohibitions.

43.2.1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

43.2.2. Unless an exception in paragraph (c) of this clause applies, Professional and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

43.2.2.1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

43.2.2.2. Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a

- substantial or essential component of any system, or as critical technology of any system;
- 43.2.2.3. Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- 43.2.2.4. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- 43.3. Exceptions.
- 43.3.1. This clause does not prohibit Professional and its subcontractors from providing-
- 43.3.1.1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- 43.3.1.2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 43.3.2. By necessary implication and regulation, the prohibitions also do not apply to:
- 43.3.2.1. Covered telecommunications equipment or services that:
- 43.3.2.1.1. Are not used as a substantial or essential component of any system; and
- 43.3.2.1.2. Are not used as critical technology of any system.
- 43.3.2.2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- 43.4. Reporting requirement.
- 43.4.1. In the event Professional identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Professional is notified of such by a subcontractor at any tier or by any other source, Professional shall report the information in paragraph (d)(2) of this clause to the City, unless elsewhere in this contract are established procedures for reporting the information.
- 43.4.2. Professional shall report the following information pursuant to paragraph (d)(1) of this clause:
- 43.4.2.1. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- 43.4.2.2. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- 43.5. Subcontracts. Professional shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

44. **Domestic Preference for Procurement:** Professional should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
45. **Build America, Buy America Act (BABAA):** Professional and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act shall file the required certification to the City with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Professional and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Professional and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the recipient who, in turn, will forward the disclosures to FEMA, the federal agency; subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA. For FEMA financial assistance programs subject to BABAA, Professionals must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the recipient or subrecipient) each bid or offer for an infrastructure project that has not been waived by a BABAA waiver:

"The undersigned certifies, to the best of their knowledge and belief, that:

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the (insert name of project) that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The (insert name of contractor or subcontractor), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the (insert name of contractor or subcontractor) understands and agrees that the provisions of 31U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any."

\_\_\_\_\_  
Signature of (insert name of contractor or subcontractor) Authorized Official

\_\_\_\_\_  
Name and Title of (insert name of contractor or subcontractor) Authorized Official

---

Date

46. **Procurement of Recovered Materials:** If applicable, Professional, in the performance of this contract, shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. Professional also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act. Professional should, to the greatest extent practicable and consistent with the law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.
47. **Amendments:** Any changes, modifications, amendments, addenda, change orders, or constructive changes to this contract must meet the following criteria to be allowable under a FEMA grant or cooperative agreement award: the cost must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. The parties agree that changes to the method, price, or schedule of the work may be made without breaching the contract, provided that such changes are documented in writing and signed by both parties. Any changes must be supported by sufficient consideration and documented in a subsequent agreement signed by the party to be charged.
48. **Access to Records:** Professional agrees to provide the City, any Texas state agency, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Professional which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- 48.1. Professional agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 48.2. Professional agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."
- 48.3. In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the City and Professional acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States
49. **DHS Seal, Logo, and Flags:** The City, Professional and its subcontractors must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.
50. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. Professional will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

51. **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Professional, or any other party pertaining to any matter resulting from the contract.
52. **Program Fraud and False or Fraudulent Statements or Related Acts:** Professional acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Professional's actions pertaining to this contract.
53. **Socioeconomic Contracting:** Professional is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.
54. **License and Delivery of Works Subject to Copyright:** Professional grants to the City a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, Professional will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, Professional will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.
55. **Build America, Buy America Act Preference:** Professional and subcontractors agree to incorporate the Buy America Preference into planning and design when providing architectural and/or engineering professional services for infrastructure projects. Consistent with the Build America, Buy America Act (BABAA) Pub. L. 117-58 §§ 70901-52, no federal financial assistance funding for infrastructure projects will be used unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States.
56. **Creating Good Jobs:** Pursuant to FEMA Information Bulletin No. 520, Professional will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, Professional commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. Professional acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable.
57. **Buy Clean:** The City encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, the City encourages that the performance of this agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration

58. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Professional verifies that Professional: (1) does not boycott Israel and will not during the term of this Agreement per Section 2271.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2276.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

*(signature block on next page)*

DRAFT

Executed on \_\_\_\_\_ . *(date to be filled in by City Secretary)*

**Click or tap here to enter text. - “Professional”**

\_\_\_\_\_  
**Click or tap here to enter text.**

**CITY OF LEAGUE CITY – “City”**

\_\_\_\_\_  
John Baumgartner, City Manager

**Attest:**

\_\_\_\_\_  
Diana Stapp, City Secretary

**Approved as to Form:**

\_\_\_\_\_  
Office of the City Attorney

Exhibit A

**Scope of Services/Description of Products/Payment Schedule**  
(Click or tap here to enter text. pages, including this page)

Click or tap here to enter text.

DRAFT