

## **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 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 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 (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**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 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 (1) 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 (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 contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for

compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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 \$150,000)*

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.