

## Grant Guardians Contract Clause Pack

Organization Name: \_\_\_\_\_

RFP/RFQ #: \_\_\_\_\_

Short Description of Effort: \_\_\_\_\_

Included/In Effect?	Clause #	Clauses / Provisions
	1	Legal/contractual/administrative remedies for breach of contract
	2	Termination for cause and convenience
	3	Equal Employment Opportunity
	4	Davis-Bacon Act
	5	Copeland "anti-Kickback" Act
	6	Contract Work Hours and Safety Standards Act
	7	Rights to inventions made under a contract or agreement
	8	Clean Air Act and federal Water Pollution Control Act
	9	Debarment and Suspension
	10	Byrd Anti-Lobbying Amendment
	11	Procurement of Recovered Materials
	12	Prohibition on Contracting for Covered Telecommunications Equipment or Services
	13	Domestic Preference for Procurements
	14	Access to Records
	15	Contract changes or modification
	16	DHS Seal, Logo, and Flags (DHS Grants)
	17	Compliance with Federal Laws, Regulation, and Executive Orders
	18	No Obligation by Federal Government
	19	Program Fraud and False or Fraudulent Statements or Related Acts
	20	Affirmative Socioeconomic Steps
	21	Copyright
	22	Lien Waiver from subcontractors
	23	Build American, Buy America Act (BABAA)
	24	Providing Good, Safe Jobs to Workers
	25	Buy Clean

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### General Applicability Guidelines:

Clause #	Clauses / Provisions	Applicability
1	Legal/contractual/administrative remedies for breach of contract	>SAT
2	Termination for cause and convenience	>MPT ; recommended for all
3	Equal Employment Opportunity	Construction Work
4	Davis-Bacon Act	Construction Work
5	Copeland "anti-Kickback" Act	Construction Work >\$2k
6	Contract Work Hours and Safety Standards Act	Greater Than \$100k + Mechanics or Laborers
7	Rights to inventions made under a contract or agreement	Funding Agreement
8	Clean Air Act and federal Water Pollution Control Act	>\$150k
9	Debarment and Suspension	>\$25k
10	Byrd Anti-Lobbying Amendment	>\$100k; and Certification required >\$100k
11	Procurement of Recovered Materials	NFE is State or subdivision AND >\$10k
12	Prohibition on Contracting for Covered Telecommunications Equipment or Services	All
13	Domestic Preference for Procurements	All
14	Access to Records	All
15	Contract changes or modification	All
16	DHS Seal, Logo, and Flags (DHS Grants)	All (DHS/NSGP Grants)
17	Compliance with Federal Laws, Regulation, and Executive Orders	All
18	No Obligation by Federal Government	All
19	Program Fraud and False or Fraudulent Statements or Related Acts	All
20	Affirmative Socioeconomic Steps	All
21	Copyright	MAY involve creation of copyrightable material
22	Lien Waiver from subcontractors	Grant Guardians Recommendation- all
23	Build American, Buy America Act (BABAA)	Infrastructure Projects
24	Providing Good, Safe Jobs to Workers	All
25	Buy Clean	PA, BRIC, and HMGP

## 1 – Termination and Remedies for Breach of Contract

- (a) If contractor fails to substantially perform their obligations under this agreement, including but not limited to missing deadlines or failing to meet required quality standards outlined in the contract documents, such failure shall constitute a material breach, allowing the organization to terminate the contract and seek remedies and / or damages as provided by law.
- (b) *Breach Notification:* The Contractor shall notify the Organization immediately upon knowledge of any breach or violation of contract terms.
- (c) *Administrative Remedies:* The Organization may impose administrative remedies including but not limited to:
- (1) Suspension or debarment from future contracts.
  - (2) Withholding of payments pending resolution of the breach.
  - (3) Modification of the contract to impose additional obligations to ensure compliance.
- (d) *Contractual Remedies:* In the event of a breach, the following contractual remedies may be pursued:
- (i) The right to cure: The breaching party shall have a specified period, not exceeding 20 days, to rectify the breach after written notification.
  - (ii) Liquidated damages: The Contractor may be liable for liquidated damages.
- (e) *Legal Remedies:* The Organization reserves the right to pursue legal remedies, including:
- (i) Recovery of damages resulting from the breach.
  - (ii) Specific performance or injunctive relief where appropriate.
- (f) *Sanctions and Penalties:* The Contractor acknowledges that sanctions and penalties may be applied as deemed appropriate by the Organization or Government, in accordance with applicable laws and regulations. Non-delivery by the contract's specified date or other vendor nonperformance shall require a penalty of no less than \$100 per day (with the exception of *force majeure* or acts of G-d) until such time that the work completed, compliant with the terms of the contract, has been accepted by the recipient.
- (g) *Compliance with Regulations:* The Contractor agrees to comply with all relevant administrative procedures and regulations.

## 2 – Termination for Convenience of the Organization

- (a) The Organization may terminate performance of work under this contract in whole or in part if the Organization determines that a termination is in the Organization's interest;
- (b) The Organization's representative shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Delivery by email is acceptable with proof of transmission to the Contractor.
- (c) If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Organization.

- (d) After receipt of a Notice of Termination the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Organization all right, title, and interest of the Contractor under the subcontracts terminated for those that the Organization shall be liable for, in which case the Organization shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Organization, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  - (6) Transfer title and deliver to the Organization (as directed) all completed or partially completed work, plans, drawings, information, supplies, and other material produced or acquired for the work terminated.
  - (7) Complete performance of the work not terminated.
- (e) The Contractor shall submit complete termination inventory schedules no later than 30 days from the effective date of termination, unless extended in writing by the Organization upon written request of the Contractor within this 30-day period.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Organization in the form prescribed by the Organization. The Contractor shall submit the proposal promptly, but no later than 30 days from the effective date of termination, unless extended in writing by the Organization upon written request of the Contractor. If the Contractor fails to submit the proposal within the time allowed, the Organization may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (e) of this clause, the Contractor and the Organization may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit from work done. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (h) If the Contractor and the Organization fail to agree on the whole amount to be paid because of the termination of work, the Organization shall pay the Contractor the costs incurred in the performance of the work prior to Notice of Termination exclusive of any payment(s) previously made.

### **3 – Equal Employment Opportunity**

- (a) During the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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 contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of

Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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

#### **4 – Davis-Bacon Act**

(a) The Davis-Bacon Act requires that contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor's wage determination. Additionally, contractors are required to pay wages not less than once a week.

(b) Contractors and subcontractors are required to insert (or incorporate by reference) the clauses contained at 29 C.F.R. § 5.5(a)(1)-(10)20 into any subcontracts and shall comply with the Davis-Bacon Act.



(c) Contractors and subcontractors shall follow the other requirements of the Davis-Bacon Act and implementing regulations.

### **5 - Copeland "Anti-Kickback" Act**

(a) Contractor. The contractor 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.

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

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

### **6 – Contract Work Hours and Safety Standards Act**

(a) IAW 29 C.F.R. § 5.5(b)(1)-(4),

(1) *Overtime requirements:* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages:* In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the contractor and any subcontractor responsible 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 (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages:* The Organization 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 contract with the same prime contractor, or any other contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

## **7 – Rights to Inventions Made Under a Contract**

(a) *Compliance with Funding Agreement Regulations:* If this contract is funded by a Federal award that meets the definition of “funding agreement” as defined under 37 CFR § 401.2(a), the recipient or subrecipient shall comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” along with any applicable implementing regulations issued by the awarding agency.

(b) *Substitution of Parties:* In the event the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under the funding agreement, such actions must be conducted in accordance with the stipulations outlined in [37 CFR Part 401](#).

(c) *Rights to Inventions:* The rights to inventions made under this contract shall be determined in accordance with the provisions of the aforementioned regulations, ensuring that the ownership, rights, and responsibilities related to inventions are clearly defined and compliant with Federal standards.

(d) *Notification Requirement:* The recipient or subrecipient shall notify the awarding agency of any contractual arrangements made with small business firms or nonprofit organizations concerning the work performed under the funding agreement.

## **8 – Clean Air Act & Federal Water Pollution Control Act**

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

(b) The contractor agrees to report each violation to Organization and understands and agrees that the Organization will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

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

(d) 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.*

(e) The contractor agrees to report each violation to the Organization and understands and agrees that the Organization will, in turn, report each violation as required to assure notification to State representative, FEMA, and the appropriate Environmental Protection Agency Regional Office.

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

## **9 – Debarment and Suspension**

(a) This contract is a covered transaction for the purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) 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.

(c) This certification is a material representation of fact relied upon by the Organization. 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 Organization, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 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.

## **10 – Byrd Anti-Lobbying Amendment**

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

(b) Contractors who apply or bid for an award of \$100,000 or more shall include a signed [Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying](#) (see below).

## **11 – Procurement of Recovered Materials**

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

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule
- (2) Meeting contract performance requirements; or

- (3) At a reasonable price.
- (b) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **12 – Prohibition on Contracting for Covered Telecom Equipment or Services**

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- (b) *Prohibitions.*
  - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) *Exceptions.*
  - (1) This clause does not prohibit contractors from providing—

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

### **13 - Domestic Preferences for Procurements**

- (a) As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or



use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

(b) For purposes of this clause:

(1) *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.

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

#### **14 - Access to Records**

(a) The Contractor agrees to provide the Organization, State representative, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(b) 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.

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

(d) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Organization and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

#### **15 – Contract changes or modifications**

(a) Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

#### **16 – DHS Seal, Logo, and Flags (DHS Grants)**

(a) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.

#### **17 – Compliance with Federal Laws, Regulation, and Executive Orders**

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



## 18 – No Obligation by Federal Government

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

## 19 – Program Fraud and False or Fraudulent Statements or Related Acts

(a) The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

## 20 – Affirmative Socioeconomic Steps

(a) If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in [2 C.F.R. § 200.321\(b\)\(1\)-\(5\)](#) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

See appendix D for Self-Certification of Small Business Status

## 21 – License and Delivery of Works Subject to Copyright and Data Rights

(a) The Contractor grants to the Organization, 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, the Contractor will identify such data and grant to the Organization 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, the Contractor will deliver to the Organization 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 Organization.

## 22 – Protection Against Liens

(a) *Non-Payment and Liens:* The Contractor shall ensure that all subcontractors, suppliers, and other parties performing work or supplying materials under this contract are paid in full for their services and materials. If any subcontractor, supplier, or laborer places a lien or encumbrance on the property due to the Contractor's failure to make payments in accordance with the terms of this contract, the Contractor shall be responsible for promptly removing the lien, paying any associated costs, and holding the Organization harmless from any such claims.

(b) *Indemnification:* The Contractor agrees to indemnify and hold the Organization, its officers, employees, and agents, harmless from any loss, damage, or expense arising out of any lien, claim, or encumbrance filed by a subcontractor, supplier, or laborer due to the Contractor's failure to make timely and proper payments for work performed or materials provided. This indemnification shall include the cost of legal defense, court costs, and any settlement or judgment related to the lien.

(c) *Limited Lien Agreements and Lien Waivers:* Contractor shall collect signed limited lien agreements from all parties listed in paragraph (a), see appendix B. Limited lien agreements shall waive the right of the aforementioned parties to file a lien against the Organization or their property and restrict their ability to file a lien to be only against the contractor. Additionally, the contractor shall collect a Lien Waiver from the aforementioned parties, confirming payment in full and release of claims, to protect the Organization in the event that the limited lien agreement is not held up in court.

**Contractor shall provide all limited lien agreements to the organization before the start of any work/performance as well as all newly signed limited lien agreements as applicable throughout the life of the contract.** Additionally, upon request, the Contractor shall provide the lien waivers from subcontractors, suppliers, and other parties to confirm that payments have been made and no liens or claims have been filed or are pending. The Contractor shall require the same from its subcontractors at all levels.

(d) *Failure to Pay and Remedy:* If the Contractor fails to make payment as required under the contract and a lien is placed, the Organization may, at its discretion, withhold any further payments to the Contractor until such lien is removed or resolved. The Organization reserves the right to take whatever action is necessary to ensure that all liens are cleared, including using retained funds to settle claims, with the Contractor being liable for any shortfall. Again, the Contractor shall be responsible for promptly removing the lien, paying any associated costs, and holding the Organization harmless from any such claims.

## 23- Build American, Buy America Act (BABAA)

Contractors 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 Organization with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Contractors 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. Contractors 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.

See self-certification Attachment/Appendix

## 24- Providing Good, Safe Jobs to Workers

Pursuant to [FEMA Information Bulletin No. 520](#), the contractor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the contractor 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. The contractor 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.

## 25- Buy Clean

The Organization encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, the Organization 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.

## Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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.

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

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

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



## Appendix B- Limited Lien Agreement

### LIMITED LIEN AGREEMENT

(Lien Restriction to Contractor Only)

This Limited Lien Agreement (the "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

\_\_\_\_ ("Subcontractor"), with an address at \_\_\_\_\_;  
and

\_\_\_\_ ("Contractor"), with an address at \_\_\_\_\_;

#### RECITALS:

WHEREAS, the Subcontractor has entered into an agreement with the Contractor to provide labor, materials, and/or services (the "Work") for the project located at \_\_\_\_\_ (the "Property"), which is owned or controlled by \_\_\_\_\_ ("Client");

WHEREAS, the Subcontractor and Contractor acknowledge the importance of protecting the Client and the Property from lien claims while ensuring the Subcontractor's ability to secure payment from the Contractor;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

#### 1. Waiver of Lien Rights Against the Client and Property

The Subcontractor hereby irrevocably waives and releases any and all rights to file, claim, or enforce a mechanic's lien, materialman's lien, or any other lien or encumbrance under applicable law against the Client, the Property, or any interest of the Client in the Property.

#### 2. Reservation of Lien Rights Against the Contractor

The Subcontractor expressly reserves its right to pursue any and all legal remedies, including the filing of a mechanic's lien or similar claim, against the Contractor for any unpaid amounts related to the Work.

#### 3. Limitation of Remedies

The Subcontractor agrees that its sole recourse for nonpayment shall be against the Contractor and waives the right to assert any lien, claim, or action directly against the Client or the Property.



#### 4. Indemnification

The Subcontractor agrees to indemnify, defend, and hold harmless the Client from any claims, liens, or encumbrances arising out of the Subcontractor's performance of the Work.

#### 5. Entire Agreement

This Agreement constitutes the entire understanding between the parties regarding the limitation of lien rights and supersedes all prior negotiations, understandings, or agreements, whether written or oral.

#### 6. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

#### 9. Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

#### SUBCONTRACTOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### CONTRACTOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## Appendix C- Lien Waiver and Release

## LIFEN WAIVER AND RELEASE

This Lien Waiver and Release (the "Waiver") is executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by:

\_\_\_\_\_ ("Subcontractor/Supplier"), whose address is  
\_\_\_\_\_, in favor of \_\_\_\_\_ ("Contractor")  
and \_\_\_\_\_ ("Owner/Client"), collectively referred to as the  
"Released Parties."

RECITALS:

WHEREAS, the Subcontractor/Supplier provided labor, services, materials, or equipment for the project located at \_\_\_\_\_ (the "Property");

WHEREAS, the Subcontractor/Supplier acknowledges that it has received payment for labor, services, materials, or equipment provided for the project;

NOW, THEREFORE, in consideration of the payment received, the Subcontractor/Supplier agrees as follows:

## 1. Waiver and Release of Lien Rights

The Subcontractor/Supplier irrevocably waives, releases, and relinquishes any and all rights to file, claim, or enforce any lien, claim of lien, or encumbrance of any kind against the Property, the Owner/Client, or any other interest in the Property, arising from labor, services, materials, or equipment provided to the project.

## 2. Payment Acknowledgment

The Subcontractor/Supplier hereby acknowledges receipt of the total sum of \$\_\_\_\_\_ as payment for labor, services, materials, or equipment provided to the project and agrees that no further amounts are owed to the Subcontractor/Supplier for the same.

### 3. Final Release of Claims

This Waiver constitutes a final release and discharge of any and all claims, demands, or actions the Subcontractor/Supplier may have against the Released Parties related to the project.

#### 4. Representations and Warranties

The Subcontractor/Supplier represents and warrants that:

All subcontractors, suppliers, and laborers engaged by the Subcontractor/Supplier have been paid in full;

There are no outstanding claims, liens, or disputes related to the work performed or materials provided by the Subcontractor/Supplier.

#### 5. Binding Effect

This Waiver is binding upon the Subcontractor/Supplier, its heirs, successors, assigns, and legal representatives.

#### 6. Governing Law

This Waiver shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

#### 7. No Waiver Until Payment Cleared

This Waiver and Release is expressly contingent upon clearance of the final payment referenced above. In the event that such payment is not honored, this Waiver shall be null and void.

IN WITNESS WHEREOF, the undersigned has executed this Final Lien Waiver and Release as of the date first written above.

SUBCONTRACTOR/SUPPLIER:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS/NOTARY PUBLIC (if required by jurisdiction):

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



## Appendix D- Self-Certification of Small Business Status

This certification is provided to confirm that the undersigned business entity qualifies as a small business under the standards established by the U.S. Small Business Administration (SBA) for the applicable NAICS (North American Industry Classification System) code(s) and other relevant designations.

### **1. Business Information**

**Business Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, ZIP Code:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**UEI Number:** \_\_\_\_\_

**NAICS Code(s):** \_\_\_\_\_

### **2. Certification of Small Business Status**

I, the undersigned, hereby certify that the above-named business entity meets the SBA size standards for small business under the above listed [NAICS code\(s\)](#).

Specifically, the business:

1. Meets the SBA's size standard for small businesses in the identified industry(ies), as defined under [13 CFR §121.201](#);
2. Is independently owned and operated; and
3. Has an annual revenue or employee count within the limits set by the SBA for the applicable NAICS code(s).

### **3. Subcategories of Small Business (if applicable)**

Please check all that apply:

\_\_\_\_\_ **Small Disadvantaged Business (SDB):**

The business is at least 51% owned, controlled, and operated by one or more

socially and economically disadvantaged individuals and has been self-certified or SBA-certified as an SDB.

\_\_\_\_\_ **Woman-Owned Small Business (WOSB):**

The business is at least 51% owned, controlled, and operated by one or more women.

\_\_\_\_\_ **Economically Disadvantaged Woman-Owned Small Business (EDWOSB):**

The business meets the WOSB requirements and additional criteria for economic disadvantage as defined by the SBA.

\_\_\_\_\_ **Veteran-Owned Small Business (VOSB):**

The business is at least 51% owned, controlled, and operated by one or more veterans.

\_\_\_\_\_ **Service-Disabled Veteran-Owned Small Business (SDVOSB):**

The business meets the VOSB requirements and additional criteria for service-disabled veterans as defined by the Department of Veterans Affairs (VA) or SBA.

\_\_\_\_\_ **HUBZone Small Business:**

The business is certified by the SBA as a HUBZone (Historically Underutilized Business Zone) small business and maintains principal office and employee requirements as outlined by SBA regulations.

\_\_\_\_\_ **8(a) Business Development Program Participant:**

The business is certified by the SBA under the 8(a) Business Development Program for small disadvantaged businesses.

\_\_\_\_\_ **Other (Specify):** \_\_\_\_\_

#### **4. Affirmation and Acknowledgment**

By signing this certification, I affirm that the information provided is true and accurate to the best of my knowledge. I understand that misrepresentation of business size or category status may result in penalties, including but not limited to suspension, debarment, and civil or criminal penalties under applicable federal laws.





I further acknowledge that this certification may be subject to audit or verification by the organization, state, and federal agencies, or their authorized representatives.

**5. Signature**

**Authorized Representative Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix E- Build America, Buy America Act Self-Certification

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 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Name and Title of Authorized Official

The above signature, name, and title shall be of the contractor/subcontractor’s Authorized Official.