January 24, 2025

Ms. Heather Hockaday, Town Manager
Town of Burnsville
Post Office Box 97
Burnsville, North Carolina 28714

RE: Proposal for Damage Assessment – Bakers Creek Pump Station

Dear Heather:

McGill Associates is pleased to provide the following proposal to assist the Town with the above referenced project

The anticipated **Scope of Services** for the project is as follows:

1. Review the FEMA damage assessment and provide comments on any revisions or corrections needed.
2. Conduct a site visit to the facility and interview Town staff to determine the extent of the damage caused by TS Helene.
3. Provide a technical memorandum signed and sealed by a professional engineer summarizing the results of the evaluation including required improvements to provide a permanent repair to the facility that is in compliance with all current requirements and regulations.

BASIS OF COMPENSATION

McGill Associates proposes to provide the proposed scope of services on an hourly basis in accordance with the attached Basic Fee Schedule with a maximum not to exceed cost of $49,000. If this proposal is acceptable to you, please sign and return one copy of the attached Consulting Services Agreement to our office. If you have any questions concerning this proposal, please do not hesitate to contact me.

Sincerely,
McGILL ASSOCIATES, P.A.

MIKE DOWD, PE
Practice Area Leader

Attached: Consulting Services Agreement

Cc: Nick Huffman, PE, McGill Associates

CONSULTING SERVICES AGREEMENT

This contract entered into this 24th day of January 2025 by and between the **Town of Burnsville**, hereinafter called the Client, and McGill Associates, PA;

Witnesseth that: Whereas, the Client desires to engage McGill Associates to provide consulting services; and,
Whereas, the Client finds that the attached Scope of Services and terms of this agreement are acceptable; and,
Whereas, McGill Associates desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth. Now, therefore, the parties hereto do mutually agree as follows:

1. Scope of Services: McGill Associates shall provide the services attached hereto in the Contract Proposal "Scope of Services" of this Agreement, hereinafter called services. Fees for additional services will be negotiated with the Client prior to proceeding with the work.

2. Standard of Care: McGill Associates will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time these services are rendered.

3. Authorization to Proceed: Execution of this Consulting Services Agreement will be considered authorization for McGill Associates to proceed unless otherwise provided for in this Agreement.

4. Changes in Scope: The Client may request changes in the Scope of Services provided in this Agreement. If such changes affect McGill Associates cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement.

5. Compensation: The Client shall pay the compensation to McGill Associates set forth in the Contract Proposal "Basis of Compensation" attached hereto. Unless otherwise provided in the Basis for Compensation, McGill Associates shall submit invoices to the Client monthly for work accomplished under this agreement and the Client agrees to make payment to McGill Associates within thirty (30) days of receipt of the invoices. It is also mutually agreed that should the Client fail to make prompt payments as described herein, McGill Associates reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

6. Personnel: McGill Associates represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted expertise McGill Associates may employ such services at their discretion.

7. Opinions or Estimates of Cost: Any costs estimates provided by McGill Associates shall be considered opinions of probable costs. These along with project economic evaluations provided by McGill Associates will be on a basis of experience and judgment, but, since McGill Associates has no control over market conditions or bidding procedures, McGill Associates cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

8. Termination: This Agreement may be terminated for convenience by either the Client or McGill Associates with fifteen (15) days written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) days of written notice and diligently complete the correction thereafter. On termination, McGill Associates will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

9. Limitation of Liability: McGill Associates liability for Client's damages will, in aggregate, not exceed the total fees paid by the Client for the Scope of Services referenced herein or $50,000 whichever is greater. This provision takes precedence over any conflicting provision of this Agreement or any documents incorporated into it or referenced by it. This limitation of liability will apply whether McGill Associates liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include McGill Associates' directors, officers, employees and subcontractors. At additional cost, Client may obtain a higher limit prior to commencement of services.

10. Assignability: This agreement shall not be assigned or otherwise transferred by either McGill Associates or the Client without the prior written consent of the other.

11. Severability: The provisions of this Consulting Services Agreement shall be deemed severable, and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this consulting services agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

12. Ownership of Documents: All documents, calculations, drawings, maps and other items generated during the performance of services shall be considered intellectual property and remain the property of McGill Associates. Client agrees that the deliverables are intended for the exclusive use and benefit of and may be relied upon for this project only by the Client and will not be used otherwise. Client agrees that any prospective lender, buyer, seller or third party who wishes to rely on any deliverable must first sign McGill Associates' Secondary Client Agreement.

13. Excusable Delay: If performance of service is affected by causes beyond McGill Associates control, project schedule and compensation shall be equitably adjusted.

14. Indemnification: Client agrees to indemnify, defend and hold McGill Associates, its agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against McGill Associates which arise in whole or in part out of the failure by the Client to promptly and completely perform its obligations under this agreement, and as assigned in the Contract Proposal "Scope of Services" or from the inaccuracy or incompleteness of information supplied by the Client and reasonably relied upon by McGill Associates in performing its duties or for unauthorized use of the deliverables generated by McGill Associates. Furthermore, McGill agrees to indemnify, defend and hold the Client harmless from any claims brought against the Client as a result of McGill's work.

15. Choice of Law: This Agreement shall be governed by the internal laws of the State of North Carolina.

16. Entire Agreement: This Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements, whether oral or written, and may only be modified or amended as herein provided; and as mutually agreed.

17. Attachments to this document:

1. Contract Proposal including Scope of Services and Basis of Compensation.
2. Basic Fee Schedule
3. Exhibit A – Federal and FEMA Contract Provisions
4. Exhibit B – Standard NC Local Government Contractual Terms & Conditions Rider for Contractual Terms of Agreement for Engineering Services with McGill Associates

Client: Town of Burnsville

Authorized Signature:

_____

Print Name: Russell Fox

Title: Mayor

Address:
PO Box 97
Burnsville, North Carolina 28714

McGill Associates, P.A.

Authorized Signature:

_____

Print Name: Mike Dowd, PE

Title: Practice Area Leader

Address:
55 Broad Street
Asheville, NC 28801

EXHIBIT A – FEDERAL AND FEMA CONTRACT PROVISIONS
(2 C.F.R. Part 200. 327)

In the event of a conflict between the provisions of the Contract to which this Exhibit A applies and this Exhibit A, the provisions of this Exhibit A shall control.

For the purposes of this Exhibit A, the term "Owner" refers to TOWN OF BURNSVILLE.

A. REMEDIES (see: 2 C.F.R. Pt. 200, App.II(A)).

The provisions of this Section A shall apply to all contracts for more than the Simplified Acquisition Threshold (which amount is subject to inflation adjustment but is set at $250,000 as of October 1, 2020) that are funded by a Federal award (including a FEMA grant or cooperative agreement program).

In addition to any remedies set forth in the Contract, and except as otherwise limited in the Contract, upon the breach of the Contract by Contractor, the Owner shall have such administrative, contractual, and legal remedies as are available to it pursuant to applicable law.

B. TERMINATION FOR CAUSE AND CONVENIENCE (see: 2 C.F.R. Pt. 200, App.II(B)).

The provisions of this Section B shall apply to all contracts in excess of $10,000 that are funded by a Federal award (including a FEMA grant or cooperative agreement program).

In addition to the termination provisions provided in the Contract, the Owner may terminate the Contract for cause and/or for convenience as follows:

(1) The Contract and the performance of work under the Contract may be terminated immediately by the Owner in whole or in part, in writing, at the convenience of the Owner for any reason or no reason.

(2) The Owner has the right to immediately terminate the Contract and the performance of work under the Contract, for default, whenever the Owner shall determine that the Contractor has failed to meet its performance requirements under the Contract, including, but not limited to, failing to make delivery of supplies, perform work, or perform any other provisions required pursuant to the Contract.

(3) Upon the Owner's termination of the Contract, unless the Contractor is in breach of the Contract, the Contractor shall be paid for services rendered to the Owner's satisfaction through the date of termination. After receipt of a termination notice and except as otherwise directed by the Owner, the Contractor shall: (i) stop work on the date and to the extent specified; (ii) use its best efforts to mitigate the cost of terminating the applicable work; (iii) terminate and settle all orders and subcontracts relating to the performance of the terminated work; (iv) transfer all work in process, completed work, and other material related to the terminated work to the Owner; and (v) continue and complete all parts of the work that have not been terminated.

C. **EQUAL EMPLOYMENT OPPORTUNITY** (see: 2 C.F.R. Pt. 200, App.II(C); 41 C.F.R. " 60-1.3 and 60-1.4).

The provisions of this Section C shall apply to all "federally assisted construction contracts" (as such phrase is defined in 41 C.F.R. ' 60-1.3) that are funded by a Federal award (including a FEMA grant or cooperative agreement program).

For the purposes of this Section C, definitions provided in 41 C.F.R. ' 60-1.3, as the same shall be updated or amended from time to time, shall apply. As of July 29, 2021, those definitions include the following:

(a) "Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(b) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(c) Contract: The regulation at 41 C.F.R. § 60-1.3 defines contract as "any Government contract or subcontract or any federally assisted construction contract or subcontract."

(d) "Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

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.

As required by 41 C.F.R. ' 60-1.4(c), each nonexempt prime contractor or subcontractor shall include the above equal opportunity clauses in each of its nonexempt subcontracts.

D. Davis-Bacon Act and Copeland "Anti-Kickback" Act (see: 2 C.F.R. Pt. 200, App.II (D); 29 C.F.R. Pt. 3 and " 5.1, 5.2, and 5.5).

Unless otherwise stated in a program's authorizing statute, Davis-Bacon does not apply to certain FEMA grant and cooperative agreement programs, including FEMA's Public Assistance (PA) Program.

The Davis-Bacon Act and the Copeland "Anti-Kickback" Act, and thus this Section D, only apply to prime construction contracts in excess of $2,000 that are funded by the following Programs: Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program.

To comply with the Davis-Bacon Act, if applicable, the following are incorporated into the Contract:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The applicable federal agency or loan 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 under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or

advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the applicable agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the applicable federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the applicable agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor

site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the applicable federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the applicable agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency, applicant, sponsor, or owner, as applicable.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the applicable agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to

submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal

certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

To comply with the Copeland Anti-Kickback Act, the following are required:

(5) **Compliance with Copeland Anti-Kickback Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the applicable federal agency 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 the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be

resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

To comply with the Copeland Anti-Kickback Act, if applicable, the following are incorporated into the Contract:

(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. Part 3 as may be applicable, which are incorporated by reference into this contract.

(2) 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.

(3) 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.

E. **E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (see: 2 C.F.R. Pt. 200, App.II(E); 29 C.F.R. §§ 5.1 and 5.5)).

The provisions of this Section E shall apply to all contracts in excess of $100,000 that are funded by a Federal award (including a FEMA grant or cooperative agreement program) and that involve the employment of mechanics, laborers, and construction work. This Section E does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(The following provisions are set forth in and taken from 29 C.F.R. ' 5.5(b)):

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The applicable federal agency or the loan 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 any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

If the Contract is subject to Contract Work Hours and Safety Standards Act and not to any other statutes cited in 29 C.F.R. § 5.1, then the following provisions apply to the Contract:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social

security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor 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 employees during working hours on the job.

F. RIGHTS TO INVENTIONS (see 2 C.F.R. Pt. 200, App.II(F)).

This Section F applies to any contract where the applicable federal funding meets definition of a "funding agreement" (defined below). This Section F does not apply to all FEMA grant and cooperative agreement programs. Non-federal entities should refer to applicable Notice of Funding Opportunity or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Rights to Inventions Made Under a Contract or Agreement clause is not required for procurements under FEMA's Public Assistance (PA) Program.

Pursuant to 37 C.F.R. ' 401.2(a), the term the term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA.

G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (see 2 C.F.R. Pt. 200, App.II(G)).

The provisions of this Section G apply to all contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program) for amounts in excess of $150,000. Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency.

1. Clean Air Act:

   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.

The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner 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.

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.

II. Federal Water Pollution Control Act:

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.

The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the pass- through entity, if applicable, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

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.

H. **SUSPENSION AND DEBARMENT** (see: 2 C.F.R. Pt. 200, App.II(H); 2 C.F.R., Pt. 180 (particularly 180.200 and Appendix to Part 180)).

This Section H applies to contracts that are "covered transactions" at either a primary or secondary tier and that arise under any contract funded by a Federal award (including a FEMA grant or cooperative agreement program).

For the purposes of this Section H, the term "covered transaction" includes the following contracts for goods or services: (1) the contract is at least $25,000; (b) the contract requires the approval of FEMA, regardless of amount; (3) the contract is for federally required audit services; (4) the contract is a subcontract for $25,000 or more.

If this Section H applies, then the following provisions are incorporated into the Contract:

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

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.

This certification is a material representation of fact relied upon by the Owner. 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 (insert name of recipient/subrecipient/applicant), the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

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.

I. **BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352** (see: 2 C.F.R. Pt. 200, App.II(I); 31 U.S.C. § 1352).

This Section I applies to all contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program).

All contractors and subcontractors are prohibited from the use of federal appropriated funds to influence officers or employees of the federal government. Contractors who apply or bid for an award of $100,000 or more shall file the required certification regarding lobbying. 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 employee of a federal agency, a Member of Congress, an employee of Congress, or an employee of a Member of Congress in connection with receiving any federal contract, grant, or other award covered by 31 U.S.C. § 1352. The required certification form is found in FEMA regulations. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal funding. These disclosures are forwarded from tier to tier, all the way up to the federal awarding agency.

See Appendix A to this Exhibit A for a sample certification.

J. **PROCUREMENT OF RECOVERED MATERIALS** (see: 2 C.F.R. Pt. 200, App.II(J); 2 C.F.R. ' 200.322).

This Section J applies to all procurements over $10,000 made by the Owner or the Contractor under a Contract that is funded by a Federal award (including a FEMA grant or cooperative agreement program).

In the performance of this Contract[, where the purchase price of the item is greater than $10,000, or the value of the amount of items purchased in the preceding fiscal year was greater than $10,000], the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(a) Competitively within a timeframe providing for compliance with the contract performance schedule;
(b) Meeting contract performance requirements; or
(c) At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

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

K. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. (see: 2 C.F.R. Pt. 200, App.II(K); 2 C.F.R. § 200.316).

This Section K applies to all Contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program).

(a) Definitions. As used in this Section K, 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).

(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."

L. DOMESTIC PREFERENCES FOR PROCUREMENT. (see: 2 C.F.R. Pt. 200, App.II(l); 2 C.F.R. § 200.322).

This Section L applies to all Contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program). All FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements

Domestic Preference for Procurements:

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

For purposes of this Section L:

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.

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."

M. ADDITIONAL FEMA PROVISIONS

The provisions of this Section M shall apply to any contract that is funded by FEMA, a FEMA grant, or FEMA financial assistance:

(1) **Access to Records.** The following access to records requirements apply to this Contract:

(a) The Contractor agrees to provide the Owner, the applicable state agency or local government entity, if different from Owner, 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 Owner 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.

(2) **DHS Seal, Logos, and Flags**. The Contractor shall not use the Department of Homeland Security (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.

(3) **Compliance with Federal Laws, Regulations, and Executive Orders and Acknowledgement of Federal Funding**. 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.

(4) **No Obligation by Federal Government**. The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

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

(6) **Affirmative Socioeconomic Steps**. 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.

(7) **Copyrights and Data Rights**. The Contractor grants to the Owner, 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 Owner 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 Owner 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 Owner.

(8) CONTRACTOR'S COMPLIANCE WITH FAIR LABOR STANDARDS EMPLOYEE CLASSIFICATION:

Contractor hereby certifies that all employees are properly and correctly classified under the current Fair Labor Standards Act.

McGill Associates, P.A. (company)

BY: _____

Title: Practice Area Leader

Appendix A

Certification Regarding

Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding $100,000)

The undersigned_____[insert name of Contractor] certifies, to the best of his or her knowledge, 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,_____[insert name of 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.

_____[Insert name of Contractor]

By:_____

Name:_____

Title:_____

Date:_____

EXHIBIT B

STANDARD NORTH CAROLINA LOCAL GOVERNMENT CONTRACTUAL TERMS & CONDITIONS RIDER FOR CONTRACTUAL TERMS OF AGREEMENT FOR ENGINEERING SERVICES WITH McGILL ASSOCIATES

(the "LGR")

THIS LGR is hereby made and entered into by and between TOWN OF BURNSVILLE (the "Town") and any and all parties entering into any contract, memorandum of understanding, or other agreement of any kind, for the provision of goods, services, or other consideration of any kind, to the Town referencing its existence or inclusion as a part thereof.

Any such instrument(s) together with any and all exhibits, addenda, riders and/or any other instruments attached to, or incorporated by reference therein, shall be collectively referred to hereinafter as the "Contract".

WITNESSETH:

WHEREAS, Town is a body politic of the State of North Carolina, subject by operation of law to certain additional rules, regulations, and laws applicable to public and/or governmental bodies including without limitation certain operational and contractual requirements; and

WHEREAS, the risk of financial default under a contract entered into by such a governmental body is substantially lower than the ordinary risk of financial default attributable to private or commercial entities; and

WHEREAS, Town has established this LGR for the non-exclusive purposes of expediting its contract review and approval process, to document notice of its governmental status, and to protect its citizens and the public at large from illegal or unfair obligations otherwise imposed under certain adhesion contracts; and

WHEREAS, Town is prohibited by applicable law from executing the Contract without modification by this LGR, or has otherwise determined it is not in the best interests of its citizens and the public at large to do so without the additional terms and conditions of this LGR being made a part thereof.

NOW THEREFORE, in exchange of the mutual covenants made herein, and for other good and valuable consideration exchanged between the parties, the sufficiency of which is hereby acknowledged, including but not limited to the inducement of Town to enter into the Contract as modified by this LGR, the parties agree as follows:

PART A: AMENDED CONTRACT TERMS:

1. Contract Incorporation: **THE TERMS AND PROVISIONS OF THIS LGR SHALL BE DEEMED FULLY AND COMPLETELY INCORPORATED INTO, AGREED TO, AND ACCEPTED BY, ALL PARTIES ENTERING INTO ANY CONTRACT WHICH REFERENCES THEIR EXISTENCE IN ANY WAY AND MORE SPECIFICALLY THE SERVICE AGREEMENT BETWEEN MCGILL ASSOCIATESAND THE TOWN OF BURNSVILLE**; including to the fullest extent permitted by law, incomplete or non-specific references to their existence where any

party could with reasonable due diligence have ascertained the existence and content of its terms. Each party entering into any such Contract further agrees that the incorporation of this LGR into the terms and conditions of the Contract shall be deemed to be a **MATERIAL CONDITION PRECEDENT** to Town's acceptance of such Contract, and to the validity and enforceability of said Contract against Town by any party thereto. Partial performance by any party under such a Contract without formal execution thereof, shall be considered as agreement to, and acceptance of, these LGR terms and conditions.

2. Contractual Conflict & Precedence: **NOTWITHSTANDING ANY STATEMENT OR PROVISION WITHIN THE CONTRACT TO THE CONTRARY, AND EXCEPT FOR ANY "ADDITIONAL TERMS & CONDITIONS" AGREED TO BETWEEN THE PARTIES PURSUANT TO THE IMMEDIATELY FOLLOWING PARAGRAPH, THE TERMS AND CONDITIONS OF THIS LGR SHALL SUPERSEDE, CONTROL OVER, AND PREVAIL IN THE EVENT OF ANY CONFLICT WITH ANY DIFFERING OR CONTRARY TERMS OR CONDITIONS OF THE CONTRACT**. Except to the extent they are inconsistent with or modified by this LGR, the terms and conditions of the contract shall remain in full force and effect.

3. Additional Terms & Conditions: To the extent the parties require any additional or specific modifications or amendments to the Contract, or to this LGR itself, the same shall be reduced in writing and attached to the Contract labeled as "Additional Terms & Conditions" which shall clearly reference the Contract to which it applies, shall state that it takes precedence over, and shall control in the event of any conflicts with, both the Contract and any "Local Government Rider", and shall be separately signed by all parties concurrently with their execution of the Contract instrument(s).

PART B: STANDARD LOCAL GOVERNMENT PROVISIONS:

1. Public Records & Confidentiality: Town is required to comply with certain applicable statutes of the State of North Carolina regarding open meetings and/or open records. Notwithstanding anything to the contrary within the Contract, Town shall not be liable to any party for disclosing the Contract, or any documents or communications made or received in relation thereto, to any third party or the public at large, if such disclosure is made by Town in a good faith effort within its sole discretion, to comply with any public records request or other applicable laws.

2. Limitation on Contractual Authority: Only the Town Council, or it's designee or another agent specifically designated in writing by either to exercise their respective authority related to the Contract shall be authorized to enter into, modify, or otherwise bind the Town to the Contract in any way. Any such action shall be taken only by the signed written consent thereof, and no party shall rely upon any verbal communications, or otherwise upon the authority of any other agent of the Town in lieu thereof. This provision shall apply to prevent any inadvertent or passive modifications to the terms of the Contract through communications between the parties as may otherwise be allowed by law, including but not limited to any such provisions of the North Carolina Uniform Commercial Code, if applicable.

3. Limitation Upon Partial/Progress Payments for Goods/Materials to be Delivered: Payment (partial or otherwise) for any physical goods or materials to be provided to the Town pursuant to the Contract, shall not be due or owed by the Town until after actual delivery and acceptance of any such physical items.

4. E-Verify Certification: At all times during performance of the Contract, all parties shall fully comply with Article 2 of Chapter 64 of the General Statutes, and shall ensure compliance by any subcontractors utilized. All parties shall execute an affidavit verifying such compliance upon request by Town.

5. Iran Divestment Act Certification and Israel Boycott list: All parties executing this Contract thereby affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to NCGS 143-6A-4, or the Boycott of Israel List created by the NC State Treasurer pursuant to the provisions of NCGS 147-86, nor shall they utilize any subcontractor in the performance of the Contract that is identified upon said list.

6. Constitutional Limitation on Town Indemnification: The parties acknowledge and understand that an unlimited indemnification by Town constitutes a violation of the North Carolina Constitution, and is void and unenforceable by operation of law. Any indemnifications given by Town to any party under the Contract shall be deemed to be given only to the fullest extent allowed by law.

7. Contingent Funding/Non-Appropriations Clause: Notwithstanding anything to the contrary within the Contract or this LGR, all financial obligations of the Town under the Contract are dependent upon, and subject to, the continuing allocation of funds by the Town Council for such purpose. The Contract shall automatically terminate if such funds cease to be allocated or available for any reason.

8. Not to Exceed (NTE) Cap: Unless otherwise approved in writing by Town, the total amount of compensation payable by Town to all parties under the Contract during each fiscal year of Town (running from July 1 to June 30 of the following calendar year) shall not exceed the amount, if any, which is specifically listed within the Contract as **"Total annual compensation hereunder Not to Exceed $ 49,000.00 ,without Town Council's or their designee's prior written approval"**. This amount is the total combined budget normally allocated for the services rendered under the Contract, and may be increased unilaterally by Town from time to time, only through the written approval of the Town Council or their designee which may be given via email.

9. Preaudit & Purchasing Policy Notices: Per NCGS § 159-28 no contract with a local government including Town requiring the payment of any public funds is valid unless properly preaudited in the manner required by said statute. The Contract must contain a Preaudit Certificate signed by the Town Finance Officer or their Deputy which shall take the substantially the following form "This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act." Failure to obtain a preaudit upon the Contract makes the contract invalid and unenforceable per state law. Additionally, no obligation for any goods sold or services rendered to Town is validly enforceable without a valid signed contract, or a signed Purchase Order for such goods or services. Contact the Town Finance Office at 828-682-2420 with any questions or for further information related to this provision.

PART C:OTHER GENERAL PROVISIONS

Notwithstanding anything within the Contract to the contrary:

1. Choice of Law and Forum: The Mediation terms of section 8.2, in the attached AIA contract, shall apply; however if the parties are unsuccessful at reaching agreement through Mediation this Contract shall be enforced and shall be governed by and construed in accordance with North Carolina law. Any

filing for breach or enforcement of this Contract shall be filed in the appropriate court of General Jurisdiction located in Yancey County, North Carolina.

2. Construction & Headings: No rule of construction shall apply against any party as the drafter of the Contract which is the result of an arms-length negotiation between the parties. The titles/captions/headings of any and all portions of the Contract are intended for reference purposes only, and shall not be deemed to affect the meaning or interpretation of the Contract terms and conditions.

3. Merger: The Contract is the entire agreement between the parties with respect to the foregoing matter and there are no other verbal or written agreements with respect thereto between the parties which have not been reduced to writing and specifically incorporated into the Contract.

4. Modification: No modifications of the Contract shall be valid unless reduced to writing signed by all parties hereto.

5. Severability: The provisions of this Contract are intended to be severable. Any and all provisions of this Contract that are prohibited, unenforceable, or otherwise not authorized in any jurisdiction shall, as to such portion and/or jurisdiction only, be deemed ineffective to the extent of such prohibition, unenforceability, or non-authorization, without invalidating the remaining provision(s) hereof in such jurisdiction, or affecting the continuing validity, enforceability, or legality hereof in any other jurisdiction.

6. Signature Warranty: Any party executing the Contract as a corporate or other legal entity represents to the other parties hereto that such entity is duly organized, validly existing, and in good standing under the laws of the State of North Carolina or otherwise under the laws of the state of its formation, and is qualified to transact the business contemplated herein within the state of North Carolina, and further that any such party executing the Contract on behalf thereof, has the full power and authority to do so without any further authorization being required from any party, and thereby legally binds said entity to the terms and conditions of this Contract.

7. Additional Limitation of Scope of Town Indemnification: If applicable, any indemnification given by Town shall be deemed and further limited to indemnify against claims or actions arising from the action or inaction of Town's own officers, officials, employees or agents only; and shall not be deemed to indemnify any party against claims or actions arising from any action or inaction of any other parties.

8. Waiver of Consequential/Punitive Damages: Under no circumstances whatsoever, shall any party be entitled to recover, and all parties hereby waive their right to seek, any indirect, punitive, special or consequential damages of any kind whatsoever, incurred in connection with any breach of the Contract. Notwithstanding the foregoing, the reasonable costs incurred in connection with successfully enforcing the Contract against another party, including court costs, fees, and reasonable attorneys' fees associated therewith shall be recoverable by such a prevailing party.

9. Savings Provision: Town shall not be held in default of the Contract or otherwise deemed in breach thereof, unless it has first failed to cure any condition causing such default within fifteen days (15) days written notice thereof by the party alleging such default. If Town cures any default within that period, no breach of the Contract shall be deemed to have occurred.

10. Electronic and/or Duplicate Execution & Order of Execution: The Contract may be executed in multiple counterparts, in which event each executed copy shall be deemed an original document as between the parties. An electronic signature and/or copy of the Contract shall have the same force and affect as the original. Due to the need to comply with statutory auditing requirements, all parties contracting with Town shall execute the Contract first and deliver a fully signed copy thereof (preferably via electronic form) to the Town for its counter-execution and delivery of a fully signed copy to all parties.

11. GRANTS: Engineer acknowledges that this project is funding through a FEMA grant administered by the Office of North Carolina Emergency Management (NCEM) which requires reporting as to use of the funds. The Engineering Firm agrees to supply any documentation (if any) required by NCEM for the management of the Grant as it relates to their services on the project.

SIGNATURES:

ATTEST:

_____
TOWN CLERK

Town of Burnsville:

BY:_____

Title:_____

Date:_____

McGILL ASSOCIATES

BY:_____

Title: Practice Area Leader

Date: January 24, 2025