

## **AGREEMENT FOR DEBRIS MONITORING, DISASTER RECOVERY, AND EMERGENCY PLANNING SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF MT JULIET, TENNESSEE, hereinafter referred to as the **City**, and GOODWYN, MILLS & CAWOOD, LLC, hereinafter referred to as the **Consultant**, for one (1) year with the option to renew for four (4) consecutive one (1) year periods, under the same terms and conditions.

WHEREAS, the City desires to have professional services and consultation performed relative to General Disaster Recovery Work, which will consist of professional services for projects that do not require preparation of construction documents for public bid;

WHEREAS, Consultant has the necessary skills, experience, and resources to perform the necessary services and the City has so determined to engage Consultant for same pursuant to a competitive procurement process;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the City and Consultant do agree, each with the other, as follows:

### **ARTICLE 1. Basic General Disaster Recovery Services.**

Consultant shall provide management, administrative, and legal support of program activities as needed to recover costs under the Federal Emergency Management Agency (FEMA)'s Recovery Programs and assist with project development. Services shall include:

- Phase I: Scoping and Planning
  - Work with the City to identify eligibility & track costs that are eligible for reimbursement for the City of Mt. Juliet, TN, GA
  - Attend applicant briefings and kickoff meetings
  - Attend site visits with FEMA and state representatives, as necessary
  - Review procurement procedures for compliance with federal, state and local procurement regulations
  - Provide guidance with all document reporting requirements
- Phase II: Project Formulation & Project Worksheet Preparation
  - Prepare and coordinate the development of summaries of documentation to support Project Worksheets (PW's) and versions submitted for the City
  - Assist the City in responding to FEMA document requests and questions
  - Provide technical support on documentations and compliance requirements, including environmental issues, historical preservation issues, and strategic approaches to Section 404 and 406 mitigation grants
  - Provide strategic assistance to address unique needs that are not satisfied by routine disaster assistance programs and assist with FEMA reimbursement for Alternate and Improved Projects
  - Work with and provide oversight to departments as needed to assist the City through the process
  - Prepare the City personnel for meetings and attend meetings as needed with FEMA, State and other funding agencies
  - Attend periodic status meetings with the City as requested.
- Phase III: Appeals and Closeout
  - Review appropriate documentation for justification of project extension, if needed
  - Review compliance with contracting requirements
  - Review compliance with procurement regulations
  - Prepare and file any appeals deemed necessary by the City in accordance with FEMA regulations
  - Identify procedures to detect improper payments, expenses, and contracts that could result in refunds of de-obligations
  - Reconcile all Large Projects and prepare closeout packages for FEMA

## **. Disaster Debris Monitoring Services**

GMC will provide disaster debris monitoring services to include debris generated from the public rights-of-way, and other public, eligible, or designated areas. Specific services may include:

- Coordinating daily briefings, work progress, staffing, and other key items with the City.
- Selection and permitting of DMS locations and any other permitting/regulatory issues as necessary.
- Scheduling work for all team members on a daily basis.
- Hiring, training, scheduling, and managing field staff.
- Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency as well as speed up recovery work and assure all debris removal work meets FEMA eligibility guidelines.
- Assisting the City with responding to public concerns and comments.
- Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
- Entering load tickets into a database application.
- Maintaining of source documentation (such as load tickets).
- Developing daily operational reports to keep the City informed of work progress.
- Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City/County for processing.
- Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, and any other applicable agency for disaster recovery efforts by City/County staff and designated debris removal contractors.

## **ARTICLE 2. Partners**

- C&P Resiliency Group – CDBG-DR Management

## **ARTICLE 3. Responsibilities of the City**

The City agrees to provide Consultant with complete information concerning the requirements of the project and to perform the following services:

- 3.1 The City shall provide all criteria and complete information as to the City's requirements for the Project and shall furnish all design and construction standards which the City will require to be included in any reports.
- 3.2 The City will assist the Consultant by placing at the Consultant's disposal all available information pertinent to the Project.
- 3.3 Hold promptly all required meetings, serve all required notices, fulfill all requirements necessary in the development of the project, and pay all costs incidental thereto.
- 3.4 The City shall arrange for access to and make all provisions for the Consultant to enter upon public and private property to perform surveying, testing and other data collection as required for Consultant to perform services under this Agreement. City shall appoint and designate in writing a person to act as City's site access representative for such purpose, and shall include contact information for the individual so designated.
- 3.5 Designate, in writing, a single person to act as the City's Representative with respect to the work to be performed under this agreement. The person designated as Representative shall have complete authority to transmit instructions and to receive information with respect to the work covered by this agreement.

- 3.6 The City shall provide such accounting; independent cost estimating and insurance counseling services as may be required for the Project. The City shall also provide such legal services as the City may require or the Consultant may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the Consultant to carry out its obligations under this Agreement. It is expressly understood and agreed that the Consultant itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

#### **ARTICLE 4. Compensation**

- 4.1 For General Consulting Services, the City will pay Consultant based on an hourly basis as set forth in Exhibit "A", Goodwyn, Mills and Cawood, LLC Rate and Fee Schedule. Exhibit "A" shall be periodically amended, as mutually agreed, to reflect changes in Goodwyn, Mills and Cawood, LLC Rate and Fee Schedule. Fees shall be paid in monthly installments.
- 4.2 Invoices are due and payable within 30 days of receipt. If City fails to make any payment due Consultant for services and expenses within 30 days after receipt of Consultant's invoice therefore, the amounts due Consultant will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Consultant may, after giving seven days written notice to City, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

#### **ARTICLE 5. Relationship of the Parties**

- 5.1 The parties intend that this Agreement create an independent contractor relationship between them. The Consultant is a professional corporation and is not an agent or employee of City for any purpose. The Consultant cannot and will not represent that he has the authority to bind City in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that Consultant may serve as the City's representative with full authority to participate therein as designated in Article 1, above.
- 5.2 Neither party is to represent to others that the relationship between them is other than as stated above.
- 5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the City and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.
- 5.4 The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 6.5 below) are hereby bound to the other party to this Agreement and to the partner s, successors, executors, administrations , legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- 5.5 Neither the City nor the Consultant shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent professional associates, consultants, subcontractors, and vendors as the Consultant may deem appropriate to assist in the performance of services hereunder, following a request to City to consent thereto, which consent City will not unreasonably refuse.
- 5.6 Consultant may employ such independent professional associates, consultants, subcontractors, and vendors as the Consultant may deem appropriate to assist in the performance or furnishing of services under this Agreement upon the consent of City, which

consent City shall not unreasonably refuse. Consultant shall not be required to employ any consultant unacceptable to Consultant.

- 5.7 Consultant agrees to indemnify, and save City, its officers, agents and employees harmless from any and all claims for losses, liabilities, damages, claims, demands, suits, actions, proceedings, and expenses, including court costs and reasonable attorney's fees arising from the negligent acts or omissions of the Consultant.

#### **ARTICLE 6. Ownership and Use of Project Documents**

- 6.1 All documents are instruments of service in respect to the Services, and Consultant shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Services are completed.
- 6.2 Copies of documents that may be relied on by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to City are only for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 6.3 City may make and retain copies of documents for information and reference in connection with the services by City. Such documents are not intended or represented to be suitable for reuse by City or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to Consultant or to Consultant's consultants. City shall indemnify and hold harmless Consultant and Consultant's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.
- 6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

#### **ARTICLE 7. Liability and Indemnity**

- 7.1 The Consultant will not be responsible for delays, disruptions or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the Consultant.
- 7.2 City may not utilize Consultant's cost estimate after thirty calendar days from the date of delivery to City without Consultant's written consent. Estimates of cost are made on the basis of the Consultant's experience, qualifications, and professional judgment, but since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, Consultant cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by Consultant. Approvals, recommendations, estimates and decisions by the Consultant are made on the basis of the Consultant's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.
- 7.3 In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement. Except for claims made pursuant to 5.7 above, Consultant's liability to City of Mt. Juliet shall not exceed the contract price for the specific goods and services upon which the claim is based, except for claims covered by insurance.

- 7.4 Any and all liability resulting from conditions not created or caused to be created by the Consultant shall not be the liability of the Consultant.

#### **ARTICLE 8. Termination**

- 8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due Consultant at such time shall be computed upon applicable terms of Article 4, the amount of work completed by Consultant as of the termination date and Consultant's reasonable cost of winding down its services after termination.

#### **ARTICLE 9. Insurance**

- 9.1 The Consultant shall take out and maintain, and shall require any subcontractor to take out and maintain, throughout the period of this Agreement, including any work or service conducted as a result of said Agreement, insurance of the following minimum types and amounts to protect the Consultant and City:
- 9.1.1 Commercial General Liability Insurance, including Contractual Liability, Completed/Products, and Consultants Protective Liability, if subcontractors are used, with limits for Bodily Injury, including Death and Property Damage, in the amount of \$1,000,000 each occurrence and \$2,000,000 General Aggregate and Products/Comp Aggregate. City of Mt. Juliet should be named as an ADDITIONAL INSURED as per CG20 10 or equivalent and per CG20 37 or equivalent.
  - 9.1.2 Automotive Liability including Owned, Non-owned and Hired Vehicles: Limits for Bodily Injury in the amounts of \$1,000,000 each person, \$1,000,000 each occurrence, and property damage \$1,000,000 each occurrence. City of Mt. Juliet should be named as ADDITIONAL INSURED on the auto policy per CA 20 48 or equivalent.
  - 9.1.3 Worker's Compensation Statutory limits for State(s) in which work will be performed, including Employers' Liability of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limits.
  - 9.1.4 Professional Liability insurance with limits of \$1,000,000 in the aggregate covering Consultant against all sums which Consultant may become legally obligated to pay on account of any professional liability arising out of the performance of this Agreement.
- 9.2 Consultant agrees to provide City with certificates of insurance evidencing the above described coverage prior to the start of Services, and annually thereafter. Such certificates shall provide that the applicable insurance policies have been endorsed to provide a minimum of thirty days advance notice to City in the event of cancellation, non-renewal, or reduction in limits by endorsement.

#### **ARTICLE 10. Additional Federal Terms and Provisions**

- 10.1 Consultant is hereby informed and acknowledges that the City intends to submit all or part of the costs incurred under this Agreement for payment or reimbursement using federal grant funds. As such, to the extent the costs are submitted under any federal grant and as may be applicable, Consultant agrees to comply with the additional terms and conditions included in the attached Exhibit "B" Federal Terms and Provisions.

#### **ARTICLE 11. Miscellaneous**

- 11.1 This Agreement represents the entire and integrated Agreement between the City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the City and the Consultant.

- 11.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- 11.3 It is expressly understood and agreed that the obligations of this Agreement, as well as the Consultant's proprietary interest in its Consulting plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.
- 11.4 This Agreement is to be governed by the laws of the State of Tennessee.

[SIGNATURE PAGE TO FOLLOW]

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

**OWNER:**

City of Mt. Juliet.

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

\_\_\_\_\_

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

**CONSULTANT:**

GOODWYN, MILLS & CAWOOD, LLC

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

Robert Ramsey

Title: EVP Disaster Recovery

**Exhibit "A"**  
**Goodwyn, Mills and Cawood, LLC Rate and Fee Schedule**

To the extent that the City of Atmore requests GMC's assistance, the following positions and hourly rates shall apply. The fees for these services will be provided on time and materials basis plus reasonable expenses directly related to the services furnished under the resulting agreement. Non-labor expenses shall be invoiced as follows: 1) travel expenses including airfare and car rental shall be invoiced at cost, without mark-up; 2) lodging shall be invoiced up to the per diem rate according to the GSA rates established at [www.gsa.gov](http://www.gsa.gov); 3) meals and incidentals shall be invoiced at the GSA per diem rate (no receipts are required); 4) mileage shall be invoiced at the federally published rate; 5) other expenses as may be applicable to the project and preapproved by GMC and the city shall be invoiced at cost, without mark-up.

**Hourly Rate Schedule for  
Grant Application, Administration & Management Services**

<b>DEBRIS MONITORING STAFF</b>	
Project Manager	\$62.00
Operation Manager	\$47.00
FEMA Specialist	\$130.00
Field Supervisor	\$42.00
Feld Inspector/Debris Monitor	\$32.00
Tower Monitor	\$32.00
Data Manager	\$32.00
Clerical	\$32.00
<b>PUBLIC ASSISTANCE STAFF (as needed)</b>	
Emergency Planner	\$120.00
PA Project Manager	\$190.00
ENV/GIS Specialist	\$110.00
Data Manager	\$100.00
<b>ADDITIONAL SERVICES AS NEEDED</b>	
(see GMC standard Rates and Fee Schedule on the next page)	



## Standard Rate and Fee Schedule

### Standard Hourly Rates

Principal (Architect/ Engineer/ Interior Designer/ Scientist)	\$ 250.00
Executive VP/ Senior VP	\$ 225.00
Vice President	\$ 200.00
Senior Professional (Architect, Engineer, Interior Design, Scientist, Project Manager)	\$ 200.00
Professional II (Architect, Engineer, Interior Design, Scientist, Project Manager)	\$ 175.00
Professional I (Architect, Engineer, Interior Design, Scientist, Project Manager)	\$ 150.00
Intern II (Architecture, Engineering, Interior Design, Environmental Sciences)	\$ 130.00
Intern I (Architecture, Engineering, Interior Design, Environmental Sciences)	\$ 110.00
Technical III (Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Field Tech., Inspector)	\$ 140.00
Technical II (Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Field Tech., Inspector)	\$ 110.00
Technical I (Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Field Tech., Inspector)	\$ 80.00
Executive Administrative Assistant	\$ 80.00
Administrative Assistant II	\$ 70.00
Administrative Assistant I	\$ 60.00
Surveying:	
Professional Land Surveyor	\$170.00
Field Crew Supervisor	\$150.00
Survey Crew (two-man survey crew)	\$150.00
Survey Crew (three-man survey crew)	\$185.00
Survey Crew (four-man survey crew)	\$215.00
GPS equipment	\$250.00 per day

## **Federal Terms and Provisions**

### **1. Access to Records. The following access to records requirements apply to this Agreement in addition to any requirements that may be elsewhere imposed:**

- 1.1. Consultant agrees to provide City, the Comptroller General of the United States, or any of their authorized representatives or designees, access to any books, documents, papers, and records of Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant shall keep its books, documents, papers, and records available for this purpose for at least five years after this Agreement terminates or expires or such longer time as requested by City at any time prior to the expiration of the then applicable time frame. This provision does not limit the applicable statute of limitations.
- 1.2. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 1.3. Consultant agrees to provide any of the foregoing parties access to construction or other work sites pertaining to the work being completed under this Agreement, if applicable.
- 1.4. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Consultant does not transfer the records to City or any authorized or designated federal representative.

### **2. Environmental Compliance.**

- 2.1. Consultant shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
- 2.2. Consultant shall report all violations to City, any applicable State agencies, and the regional office of the Environmental Protection Agency.
- 2.3. Consultant shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.
- 2.4. Consultant shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201 et seq.).

### **3. Contract Work Hours and Safety Standards Act.**

- 3.1. 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.
- 3.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible 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 (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3.3. Withholding for unpaid wages and liquidated damages. The applicable federal funding agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

3.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (3.3.1) through (3.3.4) 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 (3.3.1) through (3.3.4) of this section.

**4. Equal Employment Opportunity. This provision is applicable to all federally assisted construction contracts, as that term is defined at 41 C.F.R. § 60-1.3. To the extent the Agreement meets this definition, Consultant agrees as follows:**

4.1. 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:

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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.

4.6. 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.

- 4.7. 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.
- 4.8. 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.
- 4.9. The contractor will include the portion of the sentence immediately preceding paragraph 2.4.1 and the provisions of paragraphs 4.4.1 through 4.4.8 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.

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

5.1. If Consultant intends to subcontract any portion of the work covered by this Agreement, Consultant must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## **6. Immigration and Nationality Act.**

6.1. Consultant agrees to comply with the terms of the employment provisions contained in 8 U.S.C. Section 1324a(e), Section 274A(e) of the Immigration and Nationality Act.

## **7. Administrative Remedies for False Claims and Statements.**

7.1. Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Consultant's actions pertaining to this Agreement.

## **8. Remedies.**

8.1. If any work performed and/or goods delivered by Consultant fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, City may in its sole discretion:

- elect to have Consultant re-perform or cause to be re-performed, at Consultant's sole expense, any of the work which failed to meet the requirements of the Agreement;
- in the case of goods, reject the goods and require Consultant to provide replacement goods that meet the needs of City and the terms of the Agreement;
- hire another contractor to perform the work and deduct any additional costs incurred by City as a result of substituting contractors from any amounts due to Consultant; or
- pursue and obtain any and all other available legal or equitable remedies.

8.2. This Section shall in no way be interpreted to limit City's right to pursue and obtain any and all other available legal or equitable remedies against Consultant.

## **9. Compliance with Applicable Laws.**

- 9.1. Consultant agrees to be bound by the terms of the Federally-Funded Subaward and Grant Agreement between City and FEMA and/or the State of Tennessee and any of its agencies if applicable.
- 9.2. The Consultant agrees to be bound by all applicable state and federal laws, regulations, and Executive Orders.

## **10. Suspension and Debarment**

- 10.1. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. The Consultant can verify its status and the status of its principals, affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov).
- This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - This certification is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

## **11. Byrd Anti-Lobbying Amendment.**

- 11.1. Consultants who apply or bid for an award of \$100,000 or more shall file the required certification found at APPENDIX A, 44 C.F.R. PART 18. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

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

(to be submitted with each bid or offer exceeding \$100,000)

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

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

- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Consultant, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant 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.

\_\_\_\_\_ Date \_\_\_\_\_

Signature

Name:

Title: