

Exhibit "D"
FEDERAL REQUIREMENTS – FEMA
Graphic Design
[11/10/20; Based on FEMA Rider revise date 10-1-18]

1. DEFINITIONS

- 1.1 Government** means the United States of America and any executive department or agency thereof.
- 1.2 FEMA** means the Federal Emergency Management Agency.
- 1.3 Third Party Subcontract** means a subcontract at any tier entered into by Contractor or any subcontractor, financed in whole or in part with federal assistance derived from the Federal Emergency Management Agency.
- 1.4** For purposes of this Exhibit, **Contractor** means the Contractor or Consultant as identified in the Agreement, and shall sometimes be referred to as "contractor."
- 1.5 Agreement** means that certain Agreement between the County of Sonoma ("County") and Contractor, and to which this Exhibit is made a part.

2. FEDERAL REQUIREMENTS

- 2.1** Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement.
- 2.2** Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, and FEMA policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 C.F.R.¹ 200.317 through 200.326 and Appendix II to 2 CFR Part 200—"Contract Provisions for non-Federal Entity Contracts Under Federal Awards," which is included herein by reference; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act; the Hatch Act (5 U.S.C.² 1501 et seq.); and all related and Department of Homeland Security--mandated federal regulations, including 44 CFR Part 7.
- 2.3** Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated by reference. In the event of any conflict between any provision of this Agreement or any FEMA term, condition, or requirement, the stricter standard shall apply. Contractor shall refer any inconsistency or perceived

¹ Code of Federal Regulations ("CFR").

² United States Code ("USC").

inconsistency between this Agreement and any federal requirement to County for guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause County to be in violation of any FEMA term, condition, or requirement.

- 2.4** Contractor acknowledges that this Agreement may be subject to grant assurances mandated by funding federal agencies. In such event, this Agreement shall be subject to and subordinate to all such grant assurances in effect at all times during the term of this Agreement. Any grant assurances mandated by any federal funding agency for inclusion after the execution date of this Agreement shall be deemed by the parties to have been incorporated herein.
- 2.5** Contractor must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- 2.6** The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.
- 2.7** Drug-free workplace. Contractor acknowledges County maintains a drug-free workplace plan. Contractor shall comply with applicable requirements of that plan and otherwise comply with applicable requirements of the Drug-Free Workplace Act of 1988 (41 USC 701-707).
- 2.8** Contractor shall ensure it has the necessary processes and systems in place to comply with applicable federal reporting requirements, including those contained in 2 CFR Part 170 as applicable.
- 2.9** Whistleblower Protections. Contractor shall inform all its employees in writing of the rights and remedies provided under the federal Whistleblower Protection Act, including 41 USC 4712.
- 2.10** Repair or Construction Activity. For all repair or construction activity done pursuant to this Agreement (if applicable), all such repair or construction shall be carried out in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards, including those required pursuant to 44 CFR 206.400.
- 2.11** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

3. ACCESS TO RECORDS

- 3.1** Contractor and its successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Government access to records, accounts, documents, information, facilities, and staff, including compliance review, investigation, evaluation, documentation and reporting requirements.
- 3.2** The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are related to this Agreement, for the

purposes of making audits, examinations, excerpts, and transcriptions. 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.

- 3.3** 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 this Agreement.
- 3.4** The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and close outs are completed, except in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant County the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.
- 3.5** The requirements set forth above are all in addition to, and should not be considered to be in lieu of, any more stringent requirement set forth in the Agreement.

4. DEBARMENT AND SUSPENSION

- 4.1** This Agreement is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM). The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. (2 CFR Part 200 Appendix II, (I)). No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its unique entity identifier to County.
- 4.2** Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 200. Gov. Code § 4477.
- 4.3** The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier

covered transaction it enters into. Contractor agrees to the provisions of Exhibit D-1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit D-1, Contractor is the “prospective lower tier participant.”

- 4.4 The Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 4.5 This certification is a material representation of fact relied upon by County. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the County, the Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4.6 The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- 5.1 The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.
- 5.2 The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

During the performance of this Agreement, Contractor agrees as follows:

- 6.1 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.

- 6.2** 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.
- 6.3** 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.
- 6.4** 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.
- 6.5** 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.
- 6.6** 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.
- 6.7** 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.

6.8 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.

7. NONDISCRIMINATION CLAUSE

7.1 Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family care leave, or based on any other prohibited basis.

7.2 Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

7.3 Contractor shall comply with the applicable provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

7.4 The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS (all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

Compliance: Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. CFR Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Contractor shall not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

- A. Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics (including watchmen and guards) 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.
- B. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor or subcontractor shall be liable to the United States 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 provisions of paragraph B in the sum of \$25 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- C. Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- D. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D 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 A through D of this section.

Further requirements are contained in the Davis-Bacon provisions (see 29 CFR 5.5(a)) stated further herein and are incorporated here by reference.

9. NOTICE OF REPORTING REQUIREMENTS

9.1 Contractor acknowledges that it has read and understands the reporting requirements of FEMA, including the “SF-425 Federal Financial Report Filing Instructions” (available at <https://www.fema.gov/media-library/assets/documents/28389>). Contractor agrees to comply with all applicable reporting requirements, including those contained in any grant terms and conditions, notices of funding opportunity, or any program guidance associated with any FEMA funding related to this Agreement.

9.2 The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

10. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

10.1 Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

10.1.1 The copyright in any work developed with the assistance of funds provided under this Agreement;

10.1.2 Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

10.2 The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

11. PATENT RIGHTS (contracts meeting the definition of “funding agreements” (see 37 CFR Part 401) for experimental, research, or development projects financed by FEMA)

-Not applicable-

12. ENERGY CONSERVATION REQUIREMENTS

12.1 The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

12.2 The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

13. CLEAN AIR AND WATER REQUIREMENTS (all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)

13.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), as amended, and the Federal Water Pollution Control Act as amended (33 USC 1251-1388) (as all or any may be

amended), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

13.2 Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

13.3 The Contractor agrees to include the above paragraphs in each Third Party Subcontract exceeding \$150,000, such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

14. TERMINATION FOR CONVENIENCE OF COUNTY (all contracts in excess of \$10,000)

See Article 14 of Contract Document 007200, "JOC General Conditions".

15. TERMINATION FOR DEFAULT (all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

See Article 14 of Contract Document 007200, "JOC General Conditions".

16. CHANGES

See Article 15 of Contract Document 007200, "JOC General Conditions," and Contract Document 012600, "Clarification and Modification Procedures".

17. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended)) (all contracts and subcontracts in excess of \$100,000)

17.1 Contractor shall not use or expend any funds received under this Agreement with any person or organization to influence or attempt 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 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.

17.2 Contractor agrees to the provisions of Exhibit D-2, Certification Regarding Lobbying, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000. 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 USC 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.

- 17.3** Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

18. MBE / WBE REQUIREMENTS

Contractor shall make good faith effort and take all necessary affirmative steps (including those listed in 2 CFR 200.321) to assure that Minority and Women's Business Enterprises and labor surplus area firms are used when possible. Failure to engage in such affirmative steps shall be considered as a material breach of the contract.

Contractor, and all its subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, including as sources of supplies, construction, equipment, or services. These affirmative steps must be documented and reported. Failure of Contractor or any subcontractor thereof to take the following steps shall be deemed a material breach of this Agreement:

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

If subcontracts are to be let, Contractor shall take the affirmative steps listed above and as otherwise required by 2 CFR 200.321.

19. PROCUREMENT OF RECOVERED MATERIALS

- 19.1** Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative

procurement program for procurement of recovered materials identified in the EPA guidelines.

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

19.2.1 Competitively within a timeframe providing for compliance with the contract performance schedule;

19.2.2 Meeting contract performance requirements; or

19.2.3 At a reasonable price.

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

19.3 The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

21. DHS SEAL, LOGO, AND FLAGS

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials, including those of FEMA or the United States Coast Guard, without specific FEMA pre-approval.

22. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT (all prime construction, repair, or alteration contracts in excess of \$2,000 funded under the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program [unless other grant or state/local law require independently])

a. Compliance with the Davis –Bacon Act:

Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction), and shall comply with all of the following:

29 CFR 5.5(a):

(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 County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from 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 (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 (write in name of appropriate 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 (write in name of 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 (write in name of appropriate 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 (write in name of 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 (or the applicant, sponsor, or owner).

(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 (write the name of the 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.

(5) Compliance with Copeland 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 (write in the name of the 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 USC 1001.

b. Compliance with the Copeland "Anti-Kickback" Act (required for all Davis-Bacon contracts, and for contracts for construction or repair of public work financed in whole or part by federal loan or grant):

(1) Contractor. The contractor shall comply with 18 USC 874, 40 USC 3145, and the requirements of 29 CFR 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 the 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 CFR 5.12.

23. BONDS (all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$150,000)

See Article 3 of Contract Document 007200, "JOC General Conditions".

24. POLITICAL ACTIVITIES

Contractor understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government without the express prior written approval of DHS.

Exhibit D-1

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or Contractor receiving Federal funds, as well as any subcontractors that the agency or Contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Contractor Signature

Date

Exhibit D-2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or organization 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 or organization 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. If any registrant under the Lobbying Disclosure Act of 1995 has made lobbying contacts on behalf of the undersigned with respect to 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.
4. 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, loan, 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 (as amended by the Lobbying Disclosure Act of 1995). 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. An imposition of a civil penalty under this subsection does not prevent the United States from seeking any other remedy that the United States may have for the same conduct that is the basis for the imposition of such civil penalty.

The undersigned 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 USC 3801 *et seq.*, apply to this certification and disclosure, if any.

Contractor Signature

Date