

**FOURTEENTH AMENDMENT TO CONTRACT NUMBER C-123897
BETWEEN
THE CITY OF LOS ANGELES
AND
MOTOROLA SOLUTIONS, INC.**

This is the **FOURTEENTH AMENDMENT** to Contract Number C-123897 between the City of Los Angeles, a Municipal Corporation, ("City"), and Motorola Solutions, Inc., a Delaware Corporation, ("Motorola" or "Contractor").

RECITALS

WHEREAS, the City, acting by and through its Board of Harbor Commissioners ("Board") for the benefit of the Los Angeles Port Police ("Port Police"), requires the installation, upgrade and activation of the public safety radio system within the Harbor District to a 700MHz system in order to comply with a mandate by the Federal Communications Commission (FCC) to switch over to the new frequencies by 2021; and

WHEREAS, the Services to be provided herein are of a professional, expert, technical, and of a temporary and occasional character; and

WHEREAS, the proprietary nature of the 700MHz technology, especially the software, limits the availability of specialized expertise to the particular Contractor, and the desire to utilize the same public safety system as the Los Angeles Police Department (LAPD) as well as to fully maximize the use of current radios to include full functionality with the recently upgraded Harbor Department Computer Aided Dispatch ("CAD") system and Records Management System ("RMS"), would make it undesirable or impractical to utilize another system vendor; and

WHEREAS, there are no known Los Angeles Harbor Department ("Harbor Department") personnel or City job classifications with the expertise to perform the proposed Services nor is it feasible to employ such personnel on a temporary or occasional basis; and

WHEREAS, the City and Contractor are desirous of executing this Fourteenth Amendment to the Master Services Agreement to include the provision and payment of certain services to provide an upgraded 700MHz radio system to the Harbor Department upon terms more fully set forth in the Master Services Agreement and this Fourteenth Amendment, for a compensation amount not to exceed Sixteen Million Five Hundred Seventy One Thousand Eight Hundred Seventy-Eight Dollars and Seventy Cents (\$16,571,878.70) in Harbor Department funds; and

WHEREAS, the Harbor Department meets the definition of "Eligible Purchasers" under the terms of the City of Los Angeles Police Department Master Services Agreement, Contract No. C-123897 ("Original Agreement"), as a department within the City other than

LAPD, and therefore has the same rights and responsibilities as LAPD under the Original Agreement with respect to its purchase of services thereunder; and

WHEREAS, the terms of the Original Agreement explicitly cover system transactions, such as the one contemplated by this Fourteenth Amendment; and

WHEREAS, the Services and Systems which are the subject of this Fourteenth Amendment have been approved by the Board of Harbor Commissioners ("Board"), and the funding for these Services has been allocated in the Harbor Department's Capital Improvement Project budget for FY19 through FY22; and

WHEREAS, on May 8, 2014, the City and the Contractor entered into Contract No. C-123897 for services; and

WHEREAS, Section 2.4 of the Original Agreement allows other City departments, including the Harbor Department, to use the Original Agreement to make purchases of services as an "Eligible Purchaser"; and

WHEREAS, Section 5.1 of the Original Agreement provides for amendments; and

WHEREAS, the First Amendment provided for an upgrade of the LAPD's Geofile system for the 9-1-1 Dispatch Center and added a contract ceiling amount of \$60,000; and

WHEREAS, the Second Amendment provided for a part of the upgrade of LAPD's radio system utilizing general fund monies and increased the contract ceiling by \$86,951.08 for a total of \$146,951.08; and

WHEREAS, the Third Amendment provided for the balance of the upgrade of LAPD's radio system utilizing grant fund monies and increased the contract ceiling by \$1,646,439.92 for a total of \$1,793,391; and

WHEREAS, the Fourth Amendment provided for communications equipment to be installed at the new Northeast Area station and increased the contract ceiling by \$261,515 for a total of \$2,054,906, provided for a \$6,000,000 contingency fund for future projects related to Scope of Agreement of the Original Agreement, increasing the total contract ceiling to \$8,054,906, and extended the term of the Original Agreement by two years to May 8, 2014 through May 7, 2019; and

WHEREAS, the Fifth Amendment provided for the purchase of logging equipment and services related to LAPD's communications system, utilizing \$1,489,436 of the Contingency funds; and

WHEREAS, the Sixth Amendment provided for the purchase of services related to LAPD's Computer-Aided Dispatch (CAD) system, utilizing \$1,382,422 of the Contingency funds; and

WHEREAS, the Seventh Amendment provided for the payment of certain services to install additional Automated License Plate Recognition (ALPR) Systems in multiple LAPD vehicles for an amount not to exceed \$52,800 in grant funds awarded by the U.S Department of Homeland Security and administered by the City through its Mayor's Office of Homeland Security and Public Safety; and

WHEREAS, the Eighth Amendment provided for further articulation of the existing scope of the Sixth Amendment and added a Deliverable and Payment Schedule for the work being performed under the Fifth Amendment; and

WHEREAS, the Ninth Amendment provided for the integration of the Statement of Work from the Eighth Amendment and hardware being purchased for this project through a separate City agreement into a single, integrated document and eliminated much of the cross referencing between the two (2) documents; and

WHEREAS, the Tenth Amendment restated some parts of *Exhibit 2* of the Eighth Amendment entitled "PremierOne CAD/PMDC Project, Statement of Work"; provided for the payment of \$50,233 and detailing the responsibilities, statement of work, pricing, and terms and conditions associated with implementing interfaces to the Niche Records Management System (RMS); and provided for the scope of work, time estimate and payment schedule of \$157,346.35 for PCAD onsite support, and \$92,215.00 for P1-CAD network engineering, integration, testing, and support; and

WHEREAS, the Eleventh Amendment provided for the payment of \$58,208 and detailed the responsibilities, Statement of Work, pricing, and terms and conditions associated with implementing interfaces to the Telogis System; and

WHEREAS, the Twelfth Amendment allowed the Los Angeles Port Police to include the provision and payment of mission critical Computer Aided Dispatch ("CAD") system and Records Management System ("RMS") which will have improved features, functionality and performance, including integration with the LAPD, upon terms more fully set forth in the Master Service Agreement and the Twelfth Amendment, for a compensation amount not to exceed Two Million Seven Hundred Fifty-Five Thousand Seven Hundred and Eighty Two Dollars (\$2,755,782) in Harbor Department Capital Improvement Project Funds; and

WHEREAS, the Thirteenth Amendment extended the term of the Agreement for an additional five-year period, commencing as of May 8, 2014 through May 7, 2024; adding PremierCAD On-site System Administrator from January 1, 2019 to May 31, 2019; and amending the Scope of Work for PremierOne CAD/PMDC Project; and

WHEREAS, this Amendment is entered into for the provision and payment of certain services for the purpose of activating an upgraded 700MHz public safety radio system (including interoperability with LAPD's radio system) for the Harbor Department for the primary purpose of meeting federal regulatory requirements, for a compensation amount not to exceed Sixteen Million Five Hundred Seventy One Thousand Eight Hundred Seventy-Eight Dollars and Seventy Cents (\$16,571,878.70) in Harbor Department Funds; and

NOW THEREFORE, the City and the Contractor agree that the Agreement be amended as follows:

1. Add **Appendix A** (to include **Appendix A-1**) which includes documentation detailing the responsibilities, statement of work, pricing, and terms and conditions associated with the installation and activation of a 700MHz public safety radio system for the Harbor Department. Contractor shall comply with all terms and provisions set forth in Appendix A, attached hereto and made a part hereof, and perform all Services set forth therein.

Of the total amount of compensation included in Section 3.1 as amended by item (2) below, the City will pay the Contractor from Harbor Department funds for full and satisfactory performance for all the Services set forth in Appendix A of this Fourteenth Amendment to the Master Service Agreement an amount not to exceed Sixteen Million Five Hundred Seventy One Thousand Eight Hundred Seventy-Eight Dollars and Seventy Cents (\$16,571,878.70) in Harbor Department Funds, inclusive of all local, state and federal taxes.

2. Section 2.2 of the Master Services Agreement, as previously amended, is hereby further amended to include the following provision:

"The City and the Contractor agree that the Contractor shall provide the City, under the terms of the Master Services Agreement (as previously amended and as further amended by this Fourteenth Amendment), the Services set forth in Appendix A of the Fourteenth Amendment to the Master Services Agreement, which is attached to the Fourteenth Amendment and made a part hereof. Contractor shall comply with all terms and provisions set forth in such Appendix A and perform all Services set forth therein. Such Services shall be performed and completed by Contractor no later than six (6) years from the date of contract execution. In the event the Master Services Agreement terminates or expires prior to the full performance or completion of the Services set forth in Appendix A of this Fourteenth Amendment, the City and the Contractor agree that the terms of the Master Services Agreement shall continue to apply to the performance and completion of all Services set forth in Appendix A of the Fourteenth Amendment to the Master Services Agreement until the expiration or termination of the time period allotted for performance and completion of such Services."

3. ***Compensation and Method of Payment***

Section 3.1 – Compensation is hereby modified as follows:

- A. City shall pay to Contractor as compensation for complete and satisfactory performance of the terms of this Agreement, an amount not to exceed Twenty-Seven Million Four Hundred Thirty-Five Thousand Three Hundred Sixty-Six Dollars and Seventy Cents (\$27,435,366.70), including state and local taxes.

- B. The City will pay the Contractor for full and satisfactory performance for all the Services set forth in Appendix A of the Fourteenth Amendment to this Master Services Agreement for an amount not to exceed, inclusive of all local, state and federal taxes. The entirety of such \$16,571,878.70 shall be paid from Harbor Department Funds as approved by the Board of Harbor Commissioners.
- C. Of the Twenty-Seven Million Four Hundred Thirty-Five Thousand Three Hundred Sixty-Six Dollars and Seventy Cents (\$27,435,366.70) not to exceed amount in Section 3.1 (A) above, Ten Million Eight Hundred Sixty-Three Thousand Four Hundred Eighty-Eight Dollars (\$10,863,488.00) represents the aggregate amount attributable to the First through Thirteenth Amendments to this Agreement.
- D. Limitation of City's Obligation to Make Payments to Contractor – Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to Contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. Contractor agrees that any services provided by Contractor, purchases made by Contractor or expenses incurred by Contractor in excess of said appropriation(s) shall be free and without charge to City and City shall have no obligation to pay for said services, purchases or expenses.

As of the date of execution of this Fourteenth Amendment, aside from the Contingency Funds referred to herein, no additional funds have been appropriated for the total amount of this Agreement. Contractor shall not perform work under this Agreement until the City notifies Contractor in writing of the amount and duration of the appropriation or, if it does perform such work, it will do so at its own risk of non-appropriation of funds. Appropriations for work to be performed under this Agreement shall be announced in conjunction with the individual solicitations for proposals in the form of a work order or Amendment issued by the Department to perform work under this Agreement.

- E. Partial funding for the City's obligations under the Fourteenth Amendment to this Agreement is provided through the Department of Homeland Security – Federal Emergency Management Agency (FEMA). Contractor agrees to comply with any federal flow down requirement(s) under the Urban Area Security Initiative as applicable, in the Title 2, part 200 of the Code of Federal Regulations (CFR) (to include the contract language and required clauses included in Appendix A-1 of the Fourteenth Amendment to this Agreement), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Further, Contractor acknowledges that funding from this award is a federal-in-aid program funded by the U.S. Department of Homeland Security.

The federal Suspension and Debarment requirements prohibit the Harbor Department from contracting with or making sub-awards to parties that are suspended or debarred or whose principles are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000. Contractor confirms that its firm and principals are not subject to debarment and suspension to any State, Local or Federal Government Agency.

4. In the event of an inconsistency between any of the provisions of this Fourteenth Amendment to the Original Agreement, or all prior or current attachments, the inconsistency shall be resolved by giving previous attachments and/or amendments precedence in the following order:
 - 1) Fourteenth Amendment through First Amendment to the Original Agreement, with the most current amendment having highest order of precedence; and
 - 2) The Original Agreement.
5. Except as amended by this Fourteenth Amendment, all other terms and conditions of the Original Agreement, as amended by the First through Thirteenth Amendments, shall remain in full force and effect.
6. This Fourteenth Amendment includes eight (8) pages and one (1) Appendix and is executed in three (3) duplicate originals, each of which is deemed to be an original. The Original Agreement is hereby incorporated by reference, in its entirety, into this Fourteenth Amendment.

[Signatures are on the next two pages.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Dated: _____, 2020

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

MOTOROLA SOLUTIONS, INC.

Dated: February 3rd, 2020

By: Scott Lees Scott Lees
Scott Lees MSSI VP
(Print/type name and title)

Attest: Neil Thomas
Neil Thomas, Vice President
(Print/type name and title)

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APPROVED AS TO FORM AND LEGALITY

2/10, 2020
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By:


JOHN T. DRISCOLL, Deputy

ATTEST:

HOLLY L. WOLCOTT, City Clerk

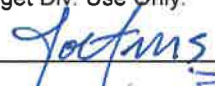
By:


Deputy City Clerk

Date:

Center	Program	Account	FY 19/20	FY 20/21	FY 21/22	Total
1179	641	54510	\$0.00	\$720,350.55	\$0.00	\$720,350.55
1179	641	54310	\$3,828,835.00	\$1,000,000.00	\$472,238.15	\$5,301,073.15
1179	641	59994	\$1,734,498.00	\$2,827,281.35	\$2,000,000.00	\$6,561,779.35
			\$5,563,333.00	\$4,547,631.90	\$2,472,238.15	\$12,583,203.05
Center	Program	Account	FY 23/24	FY 24/25	FY 25/26	Total
0412	000	54030	\$783,342.58	\$806,842.85	\$831,048.14	\$2,421,233.57
0412	000	54030	\$519,667.55	\$522,452.59	\$525,321.94	\$1,567,442.08
			\$1,303,010.13	\$1,329,295.44	\$1,356,370.08	\$3,988,675.65

For Acct/Budget Div. Use Only: Work Order No. 2542100

Verified by: 

Verified Funds Available: 

Date Approved: 2/4/2020

City Business License Numbers:

18 100-04820 1105 1

18 100-001958 1105 1

18 100-000547 1105 1

Internal Revenue Service Taxpayer Identification Number: 36-1115800

Agreement Number: C-123897-14

APPENDIX A

STATEMENT OF WORK/SERVICES

APPENDIX A-1

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II Required Contract Clauses

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326.

1. Equal Employment Opportunity.

a. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

c. "During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees

placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) 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) 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.
- (5) 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) 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 as 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.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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."

2. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to 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. It

does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act."** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this 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 C.F.R. § 5.12.”

3. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible 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 \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

4. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance,** Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
5. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. “Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

6. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
- (2) The contract requires the approval of FEMA, regardless of amount.
- (3) The contract is for federally-required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. "Suspension and Debarment"

- (1) 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).
- (2) The contractor 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.
- (3) This certification is a material representation of fact relied upon by Harbor Department. If it is later determined that the contractor 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 City of Los Angeles Mayor's Office and Harbor Department, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. 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."

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. 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 must 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 non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. “Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)”

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. 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.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

The undersigned [Contractor] certifies, to the best of his or her knowledge, 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 31, U.S.C. § 1352 (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.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. 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 by 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.

- d. “(1) 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—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) 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>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. “Access to Records. The following access to records requirements apply to this contract:

- (1) The contractor agrees to provide City of Los Angeles Mayor’s Office, Harbor Department, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) 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) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."