

## BOULDER COUNTY DEBRIS REMOVAL CONTRACT

DETAILS SUMMARY	
<b>Document Type</b>	New Contract
OFS Number-Version	301830-1
<b>County Contact Information</b>	
Boulder County Legal Entity	Boulder County
Department	Public Works
Division/Program	Resource Conservation
Mailing Address	<b>PO Box 471, Boulder CO 80306</b>
Contract Contact – <i>Name, email</i>	Laura Konersman, <a href="mailto:lkonersman@bouldercounty.org">lkonersman@bouldercounty.org</a>
Invoice Contact – <i>Name, email</i>	<a href="mailto:pwinvoices@bouldercounty.org">pwinvoices@bouldercounty.org</a>
<b>Contractor Contact Information</b>	
Contractor Name	DRC Emergency Services, LLC
Contractor Mailing Address	111 Veterans Memorial Blvd, Suite 401, Metairie, LA 70005
Contact 1- <i>Name, title, email</i>	Mark Stafford, VP Response & Recovery Operations, <a href="mailto:mstafford@drcusa.com">mstafford@drcusa.com</a> .
Contact 2- <i>Name, title, email</i>	Kristy Fuentes, VP Administration & Compliance, <a href="mailto:kfuentes@drcusa.com">kfuentes@drcusa.com</a>
<b>Contract Term</b>	
Effective Date	March 22, 2022
Expiration Date	December 31, 2022
Final End Date	March 22, 2027
<b>Total Contract Amount</b>	
Total Contract Amount	\$60,110,495.80
	(estimated based on TOTAL PROJECT COSTS plus estimated costs of foundation removal)
<b>Brief Description of Work</b>	
Contractor will provide work, labor, materials and services in connection with certain private property debris and hazard tree removal efforts.	
<b>Contract Documents</b>	
a. Formal Procurement RFP No. 7301-22 (the "Bid Documents") b. Contractor's proposal in response to the Bid Documents dated February 1, 2022 (the "Proposal") c. Form of Scope of Work and Authorization , attached as Exhibit A ("Scope of Work") d. FEMA Addendum (Post Federal Award Requirements for Procurement Contracts), attached as Exhibit B	
<b>Purchasing Details – County Internal Use Only</b>	
Bid Number	7301-22
Award Date	February 10, 2022
If no Bid No., bid process used	Bid number provided above
COVID-19	NO
Project #	
Purchasing Notes <i>(optional)</i>	
<b>Contract Notes</b>	
<i>Additional information not included above</i>	

THIS CONTRACT ("Contract") is entered into by and between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, for the benefit of the Department of Public Works ("County") and DRC Emergency Services, LLC, an Alabama limited liability company ("Contractor"). County and Contractor are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Contract Documents** and the **Details Summary** are incorporated into this Contract by reference. In the event of a conflict between a Scope of Work and any other Contract Document (except for the FEMA Addendum), the terms of the Scope of Work shall govern to the extent of the inconsistency. In the event of a conflict between the terms of the FEMA Addendum and any other Contract Document, the terms of the FEMA Addendum shall govern to the extent of the inconsistency.

2. Work to be Performed: This Contract describes the terms and conditions under which Contractor will provide work, labor, materials and services in connection with certain private property debris and hazard tree removal efforts. County will assign Work on an as-needed basis pursuant to the Scopes of Work. Individual scopes of work, costs, start dates, performance schedules, contract amounts and any other relevant project details must be agreed to in writing by both Parties prior to start of such Work pursuant to a fully executed Scope of Work, and such project-specific documents shall be incorporated into this Contract upon acceptance. **Contractor acknowledges that this Contract does not guarantee Contractor any amount of Work.** County may enter into contracts with other contractors to provide services the same as or similar to the Work. Upon full execution of a Scope of Work, Contractor will provide all labor and equipment and do all tasks necessary and incidental to remove fire structural debris material from parcels where structures were damaged or destroyed by the Middle Fork and Marshall fires, and hazard trees damaged by these fires that present an imminent threat to public infrastructure, all as more specifically described in or reasonably inferable from the Contract Documents (the "**Work**"). Contractor will perform the Work (a) in a good and workmanlike manner free from defects, (b) at its own cost and expense, (c) in accordance with recognized industry standards of care, skill and diligence for the type of work being performed, and (d) in strict accordance with the Contract Documents.

a. **Time is of the essence with respect to Contractor's obligations in performing the Work.** By signing this Contract, Contractor certifies that it has sufficient resources capable of swift deployment to expediently complete the Work within the Contract Time (as defined below).

b. Contractor shall provide cost effective debris removal accumulated on properties detailed in the Contract Documents for each Scope of Work. For any additional work as directed by the County, whether such properties are public, private, commercial, or streets, schools, roads, or locally-owned facilities, Contractor shall be entitled to a new Scope of Work or a change order to address such additional work.

c. As directed by the County in writing, Contractor shall remove all debris from the County rights of entry. Contractor will exercise the highest standard of care to prevent additional damage to any public or private property and shall be responsible and liable for all damage to public or private property caused by Contractor or any subcontractor.

d. Contractor shall exert maximum effort to save from destruction items that property owners wish to save, such as trees and building foundations. Contractor is responsible for all claims of damage to private properties caused by any act or omission of Contractor. Contractor shall make every effort to avoid damage to utilities (water, sewer, gas electric, communication lines). The County does not warrant that all utility facilities will be located prior to performance of the Work.

e. Contractor shall ensure that it has received all required approvals from the County and property owners before performing any Work on their property. Contractor shall not perform any Work on properties for which Contractor lacks sufficient consent and approvals, and Contractor is solely responsible for ensuring that its performance under this Contract and the Work itself will comply with all rights of way, licenses, deeds, easements, permits and other rights, titles or interests as are relevant to the performance of the Work. If Contractor performs work in violation of the foregoing requirements, Contractor shall bear the damages and costs attributable to such violation and the correction of the Work.

f. Contractor assumes the risk of all conditions relevant to the Work, including concealed, subsurface and unforeseen conditions, and shall be responsible for any unexpected expense or difficulty of performing the Work (subject only to reimbursement for specifically identified debris removal Work as set forth in the Contract Documents applicable to each Scope of Work). County does not guarantee the accuracy of information concerning the sites of the Work which may have been furnished by or on behalf of County. In determining the Contract Time and Contract Amount in a Scope of Work, Contractor assumes all risk and responsibility for Contractor's deductions and conclusions as to difficulties in performing the Work.

g. Contractor shall impose precautions for the safety of, and shall provide protection to prevent damage, injury or loss to: (i) employees and workers on or adjacent to or in the vicinity of each Work site and other persons who may be affected thereby; (ii) materials and equipment used in connection with the Work that are under the care, custody or control of Contractor or any subcontractor employed or retained to perform Work; and (iii) other property at the Work site or adjacent thereto or in the vicinity thereof, such as existing buildings or improvements. Contractor shall erect and maintain, as required by existing conditions and performance of the Work, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying property owners and users of adjacent facilities, sites and utilities. Contractor shall require all subcontractors to comply with stringent site safety requirements.

h. As used throughout this Contract, the term, "Scope of Work," although singular, shall refer separately to each Scope of Work executed by County and Contractor, unless the context clearly dictates otherwise. The terms and conditions of this Contract apply generally to each project authorized by a Scope of Work, and for illustration (and not limitation), the parties acknowledge that references herein to the "Project," the "Contract Documents," the "Contract Time," the "Contract Amount," and the "Work" shall refer to such terms as established or defined in the applicable Scope of Work.

3. Term of Contract: The term of this Contract shall commence on the **Effective Date** and shall continue until the **Expiration Date**, unless terminated sooner in accordance with the terms hereof (the "**Contract Term**"); provided, however, that notwithstanding any such expiration pursuant to this Section, the expiration of this Contract shall not affect or impair any ongoing Work which is evidenced by a Scope of Work executed prior to the expiration of the Contract Term and as to such Work, the terms and conditions of this Contract shall continue to apply to such Work until all obligations with regard to such particular project has been fully performed by Contractor.

4. Payment for Work Performed.

(a) In consideration of the Work performed by Contractor pursuant to an executed Scope of Work, and subject to conditions contained in this Contract, County will pay to Contractor an amount,

not to exceed the “**Contract Amount**” identified in the Scope of Work. The **Contract Amount** is a not-to-exceed amount for all Work required by a Scope of Work, and costs in excess of the Contract Amount will be borne solely by Contractor. Payments pursuant to this Section 4 shall be Contractor’s sole compensation for its profit, home office services and overhead and for any and all taxes, permits, fees, and other costs or expenses incurred in connection with the performance of the Work on the applicable project.

- (b) County may retain partial payment pending completion and County acceptance of the Work as satisfactory and fully and finally complete. For contracts that exceed \$150,000, the retention rate shall not exceed five percent (5%). C.R.S. § 24-91-103. Contractor is responsible for submitting a final invoice for any retainage held by County. If it becomes necessary for County to take over completion of the Work, all of the amounts owing to Contractor, including the withheld percentage, shall be applied: First, towards completion of the Work; second, towards performance of the withholding requirement set forth in C.R.S. § 38-26-107; third, to the surety furnishing bonds for the Work, to the extent such surety has incurred liability or expense in competing the Work or made payments pursuant to C.R.S. § 38-26-106; then, to Contractor. Such retained percentage as may be due to Contractor shall be due and payable as provided by C.R.S. § 38-26-107.
- (c) Contractor may submit for the County’s consideration a request for equitable adjustment in the event the average cost of diesel fuel increases by more than 10% over \$3.538 per gallon as provided by the US Energy Information Administration.

5. Invoicing: Contractor will promptly provide a copy of its Form W-9 and invoice template to County upon request. Contractor must submit an invoice to the County by the fifteenth (15th) day of the month for completion of any Work performed in the prior calendar month. Separate invoices shall be submitted for each Scope of Work, and all invoices submitted require the following components: clear identification of the particular Scope of Work relating to the Work that is subject of the particular invoice, Contractor’s name and address (submitted W-9 address must match remit address), detailed description of services, dates of services, location of services by parcel address, itemization of costs, “Bill to: Boulder County” language, payment remittance address, payer, name and address, date of invoice, unique invoice number, total amount due that is eligible for FEMA-reimbursement, total amount due that is ineligible for reimbursement, and such other information and back up documentation required by the applicable Scope of Work or otherwise as reasonably required by County. Contractor must send all completed invoices to the **Invoice Contact** in the **Details Summary** (unless a different party is identified in the particular Scope of Work). County may require delivery of invoices by email. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract may cause a delay in payment. County may recoup any damages incurred because of Contractor’s failure to submit invoices pursuant to the terms of this paragraph. Properly-submitted invoices shall be paid by County within forty-five (45) days of its receipt. County’s acceptance or payment of an invoice will not constitute acceptance of any Work performed under this Contract. Contractor shall make payment to each subcontractor of all amounts on or before the dates when such payments are due under the applicable subcontracts; provided that such payments shall be made not later than seven (7) days after receipt of payment from County.

6. Contract Time.

- (a) Contractor shall commence the Work required by a Scope of Work on the “**Start Date**” identified therein and shall complete all Work required by such Scope of Work on or before the “**End Date**” identified therein and otherwise in accordance with the “**Project Schedule**” included in such Scope of Work (collectively, the “**Contract Time**”).

- (b) The Contract Time shall be subject to extension only for delays caused by (1) changes to the scope of the Work contemplated by a Scope of Work required by change orders executed by County, (2) changes to any existing restrictions on Contractor's Schedule of Work by the County to the extent it impacts Contractor's ability to Complete the Work in a timely manner, (3) the unauthorized acts or neglect of County, (4) County's suspension or termination of all or a portion of the Work pursuant to subsection (e) of this Section, or (5) other causes beyond the reasonable control of Contractor and its subcontractors, that could not have been foreseen (before execution of the applicable Scope of Work), avoided or mitigated by reasonable efforts taken by Contractor or its subcontractors and is not due to the fault, negligence or breach of Contractor or any subcontractors ("**Excused Delays**"). Contractor shall not be entitled to extensions for, and assumes all risks of delays in deliveries, whether usual or unusual, any delay caused by labor disputes, and delay in the performance of any Subcontractor. Weather conditions shall constitute an Excused Delay only to the extent that (1) the total number of adverse weather delay days that delay the critical path of completion of the Work are documented in writing by Contractor to County within the time for assertion of claims set forth in subsection (c) below, and (2) exceed the number of adverse weather delay days reasonably anticipated throughout the entire time during which the Work is performed as set forth in the Project Schedule. The term "weather conditions" used herein shall mean snow, ice, rain, freezing, wind and extreme cold that materially impacts Contractor's ability to access the Work site(s) and perform Work thereon.
- (c) Upon the occurrence of an Excused Delay, Contractor shall promptly, and in any event within seven (7) days of such occurrence, notify County in writing about the Excused Delay in reasonably sufficient detail ("**Excused Delay Claim**"). Provided Contractor has timely submitted the Excused Delay Claim and County agrees in its reasonable discretion that the delay constitutes an Excused Delay, Contractor shall be entitled to an increase in the Contract Time, measured by the number of days or portions thereof that completion of the Work is delayed by such Excused Delay. Further, provided Contractor has timely submitted the Excused Delay Claim, and the Excused Delay results from the unauthorized acts or neglect of County, the Monitor, or a party for which the County is legally responsible, Contractor shall be entitled to an equitable adjustment to the Contract Amount, but only to the extent that the actual cost of performance of the Work is increased as a direct result of such unauthorized acts or neglect.
- (d) Contractor acknowledges that County will incur substantial damages if the Work authorized under a Scope of Work is not completed within the applicable Contract Time. Because both County and Contractor desire certainty with respect to their respective rights and obligations, the parties agree that if Contractor (a) fails to fully complete any Work under a Scope of Work within the applicable Contract Time (as same may be extended due to Excused Delays), then Contractor shall pay County as liquidated damages, and not as a penalty, \$10,700 per day for each day that completion is delayed, regardless of whether the delay is with respect to one or more Scopes of Work. County and Contractor agree that it would be difficult to determine precisely the amount of any actual damages incurred by County due to a delay in the completion of the Work beyond the Contract Time, and therefore agree to fix the aforesaid liquidated damages as the sole and exclusive compensation due to County for such delay. The payment of amounts as liquidated damages shall not, however, diminish or relieve Contractor of any of Contractor's obligation to complete the Work, or Contractor's responsibility or liability for damages incurred by County as a consequence of improper or defective Work, or any act, event or omission, whatsoever, other than the above-referenced delay in completing the Work within the Contract Time.

(e) The Town of Superior ("Town"), City of Louisville ("City") and the County are parties to an Intergovernmental Agreement ("IGA") pursuant to which the Town and City are required to reimburse the County in a timely manner for payments made by County to Contractor for Work performed within the jurisdictions of the Town and City. If the Town or City fails to make timely payment under the IGA, the County may suspend or terminate all or a portion of the Work within the non-paying party's jurisdiction.

7. Extension of Contract Term (Additional Time and Work): Upon mutual agreement of the Parties, this Contract may be extended until the **Final End Date** to allow for Scopes of Work to be executed after the originally contemplated Contract Term set forth in Section 3 above. During any extended **Contract Term**, the terms of this Contract will remain in full force and effect with respect to Scopes of Work executed during such period, unless otherwise amended in writing by the Parties. Contractor must provide a current Certificate of Insurance to the County that complies with the **Insurance Requirements** of this Contract, if any, prior to any extended **Contract Term**.

8. Schedule of Work: County may designate the hours (on a daily or weekly basis) during which Contractor may perform the Work, strictly for the purposes of minimizing inconvenience to the County and interference with County operations, provided any such designation does not unreasonably restrict Contractor's ability to complete the Work in a timely-manner. Contractor will otherwise set its own work schedule.

9. Indemnity: Contractor will be liable for any damages to persons or property caused by or arising out of the actions, obligations, or omissions of Contractor, its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Work under this Contract. Contractor will indemnify and hold harmless County, the City of Louisville, the Town of Superior, the State of Colorado, the U.S. Government, and their agencies, elected and appointed officials, employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including attorneys' fees, which may be made or brought by third parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. This indemnification obligation will extend to claims based on Contractor's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Contractor under any circumstances. Contractor's obligations under this provision shall survive expiration or termination of this Contract. Nothing contained in this Contract or the **Contract Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein.

10. Nondiscrimination: Contractor will comply with the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Contractor must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.

11. Information and Reports: Contractor shall provide daily progress reports to the County and its designees within 24 hours after the previous work day ends. Such reports shall contain, at a minimum; total quantity collected by type of debris, daily totals by debris type, and maps and description of the geographical areas addressed by the Contractor. Upon written request, Contractor will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Contractor will permit access to such representatives to Contractor's facilities,

books, records, accounts, and any other reasonably-relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Contractor, Contractor must so certify to the County and explain what efforts it has made to obtain the information. Contractor shall retain all records related to the Work for a period of three (3) years following completion of the Work.

12. **Independent Contractor:** Contractor is an independent contractor for all purposes in performing the Work. None of Contractor, its agents, personnel or subcontractors are employees of the County for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Contractor or Contractor's employees. As an independent contractor, Contractor is responsible for employing and directing such personnel and agents as it requires to perform the Work. Contractor will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

13. Termination

a. **Breach:** Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract or any Scope of Work.

b. **Non-Appropriation:** The other provisions of this Contract notwithstanding, County is prohibited by law from making commitments beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. County has reason to believe that sufficient funds will be available for the full **Contract Term**. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, County may terminate this Contract without penalty by providing seven (7) days' written notice to Contractor.

c. **Convenience:** In addition to any other right to terminate under this Section 13, County may terminate this Contract, or any individual Scopes of Work, in whole or in part, for any or no reason, upon seven (7) days' advance written notice to Contractor.

14. **Contractor Obligations upon Termination or Expiration:** By the **Expiration Date** or effective date of termination, if earlier, Contractor must (1) remove from County and private property all of its personnel, equipment, supplies, trash and any hazards created by Contractor except to the extent Contractor is performing Work as contemplated by Section 3, (2) protect any serviceable materials belonging to the County, and (3) take any other action necessary to leave a safe and healthful worksite. Any items remaining on County or private property after the Expiration Date or the effective date of termination, if earlier, will be deemed abandoned by Contractor, and Contractor shall be responsible for the costs associated with any removal.

15. Payable Costs in Event of Early Termination: If County terminates this Contract before the **Expiration Date** without cause, Contractor's payments (and any damages associated with any lawsuit brought by Contractor) are limited to only (1) payment for Work satisfactorily executed and fully and finally completed, as determined by County in its sole discretion, prior to delivery of the notice to terminate, and (2) the reasonable and actual costs Contractor incurred in connection with performing the Work prior to delivery of the notice to terminate, and (3) the reasonable and actual costs Contractor incurred in connection with fulfilling its obligations under Section 14. Nothing in this Section shall constitute a waiver by Contractor of any claims for damages associated with any lawsuit brought by Contractor; however, notwithstanding the foregoing, Contractor explicitly waives all claims it may have against the County for any other compensation, such as anticipatory profits or any other consequential, special, incidental, punitive or indirect damages.

16. Remedies for Non-Performance: If Contractor materially or repeatedly fails to perform any of its obligations under this Contract, County may, as reasonably determined at its sole discretion, exercise one or more of the following remedies (in addition to any other remedies provided by law or in this Contract), which shall survive expiration or termination of this Contract:

a. Suspend Performance: County may require that Contractor suspend performance of all or any portion of the Work pending necessary corrective action as reasonably specified by the County and without entitling Contractor to an increase in compensation or extension of the performance schedule. Contractor must promptly stop performance and incurring costs upon delivery of a notice of suspension by the County.

b. Withhold Payment Pending Corrections: County shall permit Contractor to correct any rejected Work at the County's reasonable discretion. Upon County's request, Contractor must correct rejected work at Contractor's sole expense within the time frame established by the County. Upon full and final completion of the corrections satisfactory to the County, County will remit payment to Contractor.

c. Deny Payment: County may deny payment for any Work that does not materially comply with the requirements of the Contract or that Contractor otherwise fails to provide or fully and finally complete, as determined by the County in its sole discretion. Upon County request, Contractor will promptly refund any amounts prepaid by the County with respect to such non-compliant Work.

d. Removal: Upon County's request, Contractor will remove any of its employees or agents from performance of the Work, if County, as reasonably determined in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

18. Conflicts of Interest: Contractor may not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Contractor's obligations.

19. Notices: All notices provided under this Contract must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact** at the address specified in the **Details Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where the County receives a claim for



payment from a supplier or subcontractor of Contractor upon notice of final settlement (required for public works contracts that exceed \$150,000); C.R.S. § 8-17-101 et seq.; C.R.S. § 18-8-301, et seq.; and C.R.S. § 18-8-401, et seq.

21. Public Contracts for Services (C.R.S. §§ 8-17.5-101, et seq.): Contractor hereby certifies, warrants, and agrees that it does not knowingly employ or contract with a worker without authorization who will perform work under this Contract and further certifies that it will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract by participating in the E-Verify Program established under Pub. L. 104-28 or the department verification program established under C.R.S. § 8-17.5-102(5)(c). Contractor (i) shall not knowingly employ or contract with a worker without authorization to perform work under this Contract; (ii) shall not enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Contract; (iii) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-Verify program or department program; (iv) is prohibited from using either the E-Verify program or department program procedures to undertake preemployment screening of job applicants while this Contract is being performed; and (v) shall comply with any reasonable request by the department made in the course of an investigation that the Colorado Department of Labor and Employment is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5). If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with a worker without authorization, Contractor shall (a) notify the subcontractor and County within three (3) days that Contractor has actual knowledge that subcontractor is employing or contracting with a worker without authorization; and (b) terminate the subcontract if, within three (3) days of receiving notice hereunder, subcontractor does not stop employing or contracting with the worker without authorization; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization. Contractor's violation of this provision will constitute a material breach of this Contract, entitling the County to terminate the contract for breach. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the County.

22. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

23. Assignment/Subcontractors: This Contract may not be assigned by Contractor without the prior written consent of the County, which consent may be withheld in County's sole discretion. Work required by the Contract Documents may not be subcontracted by Contractor without the prior written consent of the County, such County consent may not be unreasonably withheld. If Contractor subcontracts any of its obligations under this Contract, Contractor will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract. Contractor is responsible to ensure that its subcontractors comply with all federal, state, and local laws, regulations, ordinances, orders, and codes, as well as Boulder County policies, guidelines, and protocols and the Contract Documents.

24. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20<sup>th</sup> Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

25. Breach: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.

26. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.

27. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract. Notwithstanding, where the beneficiary **Department** is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.

28. Colorado Open Records Act: County may disclose any records that are subject to and in accordance with public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq.

29. Conflict of Provisions: Except as provided in Section 1, if there is any conflict between the terms of the main body of this Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.

30. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

31. Representations and Warranties: Contractor represents and warrants the following:

- a. Execution of this Contract and performance thereof is within Contractor's duly authorized powers;
- b. The individual executing this Contract is authorized to do so by Contractor;
- c. Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Contractor; and
- d. Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.

32. Legal Compliance: Contractor assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Contractor is solely responsible for ensuring that its performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes. County approval of the Work or any aspect of Contractor's performance, such as plans, designs, or other Contractor-drafted documents, shall not be interpreted to mean that Contractor has satisfied its obligations under this Section.

33. Litigation Reporting: Contractor is not currently involved in any action before a court or other administrative decision-making body that could affect Contractor's ability to perform the Work. Contractor will promptly notify the County if Contractor is served with a pleading or other document in connection with any such action.

34. Tax Exemption: County is exempt from payment of Federal, State, and local government taxes. Contractor shall collect no tax from the County, and the County shall not be liable to pay any taxes imposed on Contractor. County shall provide its tax exemption status information to Contractor upon request.

35. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads the beneficiary **Department** and their designees to act on behalf of the County under the terms of this Contract, including but not limited to the authority to terminate this Contract.

36. Ownership of Work Product: All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Contractor pursuant to this Contract (“Work Product”) will be owned exclusively by the County. To the extent possible, any Work Product will be deemed to be a work made for hire. Contractor unconditionally and irrevocably transfers and assigns to the County all right, title and interest in and to any Work Product.

37. Publicity Releases: Contractor will not refer to this Contract or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Contract.

38. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 to -121. The Parties will not deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

39. Limitation on Public Statements and Lobbying Activity. During the term of this Contract, Contractor may receive from the County its confidential data, work product, or other privileged or confidential information that is protected by law. To maintain the fact and appearance of absolute objectivity, Contractor shall not, without the prior written consent of the County, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any State or Federal agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Contractor is or was retained by the County. County may set reasonable conditions on any disclosure authorized by the County under this provision. Notwithstanding, Contractor may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

40. Sustainability: County encourages Contractor to consider the procurement and use of environmentally preferable products and services while performing services under this Contract. “Environmentally preferable purchasing” means making purchasing choices for products and services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products and services that serve the same purpose. Environmentally preferable purchasing is consistent with the County’s commitment to protecting our air, water, soil, and climate for current and future generations. County encourages Contractor to incorporate the following actions into Contractor’s performance of the Work: environmentally preferable supplies and services; conservation of water; efficient energy use; waste prevention; reuse and recycle construction and de-construction materials in a manner that maximizes reuse of materials; sustainable transportation choices, including consideration to business communication software such as Skype alternative to air travel and public transit or carpooling for in-person meetings; pollution prevention; low toxicity for public health & safety; and reduced emissions to address climate change.

41. Limitation of Liability: NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. COUNTY'S AGGREGATE LIABILITY, IF ANY, ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, AND SHALL NOT EXCEED, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY COUNTY TO CONTRACTOR. ANY CONTRACTUAL LANGUAGE LIMITING CONTRACTOR'S LIABILITY SHALL BE VOID.

42. Legal Interpretation. Each Party recognizes that this Contract is legally binding and acknowledges that it has had the opportunity to consult with legal counsel of its choice about this Contract. The rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms of this Contract.

43. No Suspension or Debarment: Contractor certifies, and warrants for the Contract Term, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

44. [For Contracts that require employees of Contractor to routinely perform more than fifteen (15) hours per month of county work in a county building.] COVID-19 Vaccine Requirement for Certain Contractors of the County: On September 28, 2021, the Boulder County Board of Commissioners adopted a COVID-19 vaccine requirement policy that applies to, as relevant here, all employees of independent contractors of the county that perform county work in a county facility. For purposes of this policy, "perform county work in a county facility" means any employee of an independent contractor that routinely performs more than fifteen (15) hours per month of county work that takes place in a county building. Under the county's COVID-19 vaccine requirement policy, these individuals are required to receive a COVID-19 vaccine unless a reasonable accommodation based on medical reasons or due to a sincerely held religious belief is requested and approved. The policy requires that, by December 1, 2021, all individuals to which the policy applies must be fully vaccinated and submit proof of vaccination or have an approved reasonable accommodation in place. Therefore, beginning December 1, 2021, any employees of Contractor that perform county work in a county facility must be in compliance with the County's vaccine requirement policy unless Contractor can show proof that it is in compliance with its own COVID-19 vaccine requirement policy or is required by local, state, or federal law or regulation to be compliant with a COVID-19 vaccine requirement policy. By its execution of this Contract, Contractor hereby acknowledges and attests compliance with this provision. Contractor shall provide proof of compliance with this provision upon County's request.

45. Insurance: Prior to commencing the Work, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage as required by this Section. All policies evidencing coverage required by the Contract will be issued by insurance companies satisfactory to the County. Contractor will forward Certificates of Insurance directly to the **County Department** and **Contact** listed in the **Details Summary**.

a. Additional Insured: Boulder County, Colorado, City of Louisville, Colorado and Town of Superior, Colorado shall all be named as an additional insured for General Liability, Umbrella/Excess Liability, and Pollution Liability, as designated in this Contract. Additional insured shall be endorsed to the policy.

**THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS:** *County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insured.*

*City of Louisville, State of Colorado, a home rule municipal corporation, is named as Additional Insured.*

*Town of Superior, State of Colorado, a statutory municipality, is named as Additional Insured.*

b. **Notice of Cancellation:** Each insurance policy required by this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days' prior written notice has been given to the County except when cancellation is for non-payment of premium, then ten (10) days' prior notice may be given. If any insurance company refuses to provide the required notice, Contractor or its insurance broker shall notify the County any cancellation, suspension, or nonrenewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.

c. **Insurance Obligations of County:** County is not required to maintain or procure any insurance coverage beyond the coverage maintained by the County in its standard course of business. Any insurance obligations placed on the County in any of the **Contract Documents** shall be null and void.

d. **Deductible:** Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Contractor.

e. **Primacy of Coverage:** Coverage required of Contractor and its subcontractors, if any, shall be primary over any insurance or self-insurance program carried by the County.

f. **Subrogation Waiver:** All insurance policies in any way related to this Contract secured or maintained by Contractor as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against County, its organizations, officers, agents, employees, and volunteers.

g. **Requirements:** For the entire duration of this Contract including any extended or renewed terms, and longer as may be required by this Contract, Contractor shall procure and maintain at its own expense, and without cost to the County, the following kinds and minimum amounts of insurance to insure the liability risks that Contractor has assumed under this Contract:

i. **Commercial General Liability**

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

ii. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

iii. **Workers' Compensation and Employer's Liability**

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

iv. **Umbrella / Excess Insurance**

Umbrella/Excess Liability insurance in the amount \$1,000,000.00, following form.

v. **Pollution Liability**

Coverage pay for those sums the Contractor becomes legally obligated to pay as damages because of Bodily Injury, Property Damage or environmental Damage arising out of a pollution incident caused by the Contractor's work including Completed Operations. Coverage shall include emergency response expenses, pollution liability during transportation (if applicable) and at Non-Owned Waste Disposal Site (if applicable). The Minimum limits required are \$1,000,000 Per Occurrence/Loss and \$1,000,000 Policy Aggregate. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. County shall be named as an additional insured for ongoing operations and completed operations.

46. **Bonds.** Upon County's request, Contractor shall obtain and deliver to County payment and performance bonds each equal to 100% of the total Contract. Bonds shall be executed by a qualified corporate surety and must be acceptable to County. County reserves the right to accept other acceptable forms of surety in lieu of a bond, and to reduce the bond requirements set forth herein consistent with C.R.S. § 38-26-106.

**[Signature Page to Follow]**

IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County	SIGNED for and on behalf of Contractor
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
↓↓ <i>For Board-signed documents only</i> ↓↓	
Attest:	<i>Initials</i>
Attestor Name:	
Attestor Title:	

**EXHIBIT A  
FORM OF  
SCOPE OF WORK**

This Scope of Work is issued pursuant to, governed by, and expressly incorporated into, the Debris Removal Contract between County of Boulder, State of Colorado, a body corporate and politic, for the benefit of the Department of Public Works ("**County**") and DRC Emergency Services, LLC, an Alabama limited liability company (the "**Contractor**") dated effective \_\_\_\_\_ ("**Contract**"). All capitalized terms not otherwise defined herein will have the meanings set forth in the Contract.

Contractor is hereby directed to provide and perform, and Contractor hereby agrees to provide and perform, all labor, equipment and tasks necessary and incidental to performing the work and services described in this Scope of Work.

**Jurisdiction:**

**Project Start Date:**

**Project End Date:**

**Scope of Work:** Contractor will perform the Work as defined in the Contract and any additional work (if listed below) for the parcels identified on Appendix 1 to this Scope of Work in accordance with the Contract and the Debris Removal Operations Plan for the Marshall Fire, incorporated herein by reference.

**Additional Contract Documents for this Scope of Work (if any):**

**Project Schedule:** Contractor will perform the Work in accordance with the project schedule located on Appendix 1 to this Scope of Work.

<b>SIGNED for and on behalf of Boulder County</b>	<b>SIGNED for and on behalf of Contractor</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:



**EXHIBIT B**  
**FEMA ADDENDUM**

**OFFICE OF MANAGEMENT AND BUDGET**

**POST FEDERAL AWARD REQUIREMENTS FOR PROCUREMENT CONTRACTS**

This is an addendum to the **Contract, RFP 7301-22**, Contract (the “Contract”) between DRC Emergency Services, LLC, an Alabama limited liability company (“Contractor”), and Boulder County, (the “County”).

A Federal award, as defined in 2 C.F.R. § 200.1, is being used to fund the Contract. Accordingly, the parties acknowledge that the above-referenced contract is subject to applicable provisions of 2 C.F.R. § 200 et seq., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and all other federal requirements identified in the award terms, assistance listing, and any other related federal guidance as any of these requirements may be amended. To the extent federal requirements are not included below or in the event of a conflict between federal guidance and the below, the terms of the federal requirements shall control.

This Addendum is hereby expressly incorporated into the contract between Boulder County and the Contractor. Regardless of any conflict of provisions language contained in the Contract, to the extent that the terms of the Contract and this Addendum conflict, the terms of this Addendum shall control.

**The applicability of the following contract provisions are described in brackets, below. As applicable, the following provisions are added and incorporated into the Contract:**

**ADDITIONAL FEMA REQUIREMENTS**

*[All contracts]*

- i. Changes:** To be effective, any change to the Contract, including the alteration of any method, price, or schedule of work must be authorized pursuant to a written amendment executed by the parties.
- ii. DHS Deal, Logo, and Flags:** Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- iii. Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- iv. No Obligation by Federal Government:** The United States Federal Government is not a party to the Contract and is not subject to any obligations or liabilities to County, Contractor, or any other party pertaining to any matter resulting from the contract.
- v. Program Fraud and False or Fraudulent Statements or Related Acts:** Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor’s actions pertaining to the Contract.

**vi. Access to Records:** The following access to records requirements apply to this Contract:

(1) Contractor agrees to provide County, the State of Colorado, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) 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) 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.

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

**vii. Unexpected Discoveries, Previously Unidentified Historic Properties, or Unexpected Effects on Historic Properties:**

Upon notification by a Subrecipient of an unexpected discovery, or if it appears that a Undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner, in accordance with Programmatic Agreement: National Historic Preservation Act, Section 106 compliance) Stipulation I.B.3(e), Recipient(s) Roles and Responsibilities, the Recipient(s) shall immediately notify FEMA and require the Subrecipient to:

- a. Stop construction activities in the vicinity of the discovery.
- b. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, participating Tribe(s), and any other consulting parties. Upon notification by the Recipient of a discovery, FEMA shall immediately notify the SHPO, participating Tribe(s), and other consulting parties that may have an interest in the discovery, previously unidentified property or unexpected effects, and consult to evaluate the discovery for National Register eligibility and/or the effects of the undertaking on historic properties.
- c. If human remains are discovered, notify the local law enforcement office and coroner/medical examiner in accordance with applicable State statute(s), such as SDCL 34-27, and protect the remains from any harm.
- d. Assist FEMA in completing the following actions, as required:
  - i. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties in accordance with the consultation process outlined in Stipulation II, Project Review (Programmatic Agreement: National Historic Preservation Act, Section 106 compliance), to develop a mutually agreeable action plan with timeframes to identify the discovery or previously unidentified property, take into account the effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal, State, and local statutes.

ii. FEMA shall coordinate with the Recipient(s) and the Subrecipient regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.

iii. In cases where discovered human remains are determined to be Native American, FEMA shall consult with the appropriate Tribal representatives and SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (2007) and any state-specific policies that may be in force.

## **Appendix II: Contract Provisions for non-Federal Entity Contracts Under Federal Awards**

**(A)** *[For contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908]*

**Breach.** Any breach of the Contract by Contractor shall be governed by the termination and remedies provisions of the Contract. Additionally, in the event that the County incurs damages as a result of Contractor's breach, the County may pursue recovery of such damages from Contractor. The County further retains the right to seek specific performance of the Contract at any time as authorized by law. The County further retains the right to otherwise pursue any remedies available to the County as a result of the Contractor's breach, including but not limited to administrative, contractual, or legal remedies, as well as any applicable sanctions and penalties. Termination for cause and convenience are governed by the provisions of the Contract.

**(B)** *[All contracts in excess of \$10,000]*

**Termination.** Termination for cause and convenience are governed by the Termination and Related Remedies provision of the Contract.

**(C)** *[Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3]*

**Equal Employment Opportunity.** Contractor agrees to comply with the Equal Opportunity Clause provided under 41 CFR 60-1.4(a) (Government Contracts) and 41 CFR 60-1.4(b) (Federal Assisted Construction Contracts), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Contractor further agrees to include this provision, including the Equal Opportunity Clause or a reference thereto, in any subcontracts it enters into pursuant to the Contract.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**(D)** *[When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities]*

**Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** Contractor must fully comply with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. In accordance therewith, Contractor must 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.

**Copeland "Anti-Kickback" Act (40 U.S.C. 3145).** Contractor must fully comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR 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"). Pursuant to the Act, Contractor is 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 County shall report all suspected or reported violations of the Copeland "Anti-Kickback" Act to the Federal awarding agency.

*(E) [Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers]*

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Contractor must fully comply with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708), including 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. 3702 of the Act, Contractor is 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. 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 purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. In the event of any violation of the clause set forth in this paragraph, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. The County can 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. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with this paragraph.

*(F) [If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a)]*

**Rights to Inventions Made Under a Contract or Contract.** For contracts entered into by the Contractor or the County 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 parties must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

*(G) [Contracts and subgrants of amounts in excess of \$150,000]*

**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** All parties 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). All parties shall report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

*(H) [For contract awards (see 2 CFR 180.220)]*

**Debarment and Suspension (Executive Orders 12549 and 12689).** 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’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The contractor must comply with 2 C.F.R. 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. Contractor attests that it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions 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. This certification is a material representation of fact relied upon by the County. 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. 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.

**(I) [For contracts exceeding \$100,000]**

**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**. 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 who in turn will forward the certification(s) to the awarding agency.

**a. Required Certification.** If applicable, contractors must sign and submit to the non-federal entity the following certification.

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

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

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

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

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

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

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

\_\_\_\_\_  
Date

**(J)** *[All contracts]*

**Procurement of recovered materials (2 CFR §200.322).** All parties agree to 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. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— 1. Competitively within a timeframe providing for compliance with the contract performance schedule; 2. Meeting contract performance requirements; or 3. At a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."



**(K)** *[All contracts]*

**Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216).** Contractor is prohibited from using equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**(L)** *[All contracts]*

**2 C.F.R. Part 25 Universal Identifier and System for Award Management.**

Subrecipient must obtain and provide to County a unique entity identifier pursuant to 2 CFR Part 25.

**(M)** *[All contracts]*

**2 C.F.R. § 200.322 Domestic preferences for procurements.** As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, prefer the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

**(N)** *[All contracts]*

**Civil Rights Requirements**

Subrecipient shall comply with all statutes and regulations prohibiting discrimination applicable to this award, which include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601

et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

#### Assurances of Compliance with Civil Rights Requirements

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as

implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

**(O)** *[All contracts]*

**Requirements for Drug-Free Workplace, 31 C.F.R. Part 20**

As a Subrecipient, you agree to comply with the requirements of the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) that applies to grants. Specifically, Subrecipient agrees to:

(a) First, make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to -

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 20.205 through 20.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 20.225).

(b) Second, identify all known workplaces under your Federal awards (see § 20.230).

**(P)** *[All contracts]*

**New Restrictions on Lobbying, 31 C.F.R. Part 21**

Subrecipient certifies, to the best of its knowledge and belief, that:

**(1)** No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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 Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**(Q)** *[All contracts]*

**Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR

19217 (Apr. 18, 1997), the County encourages its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

**(R)** *[All contracts]*

**Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225

(Oct. 6, 2009), the County encourages its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving.

**(S)** *[All contracts]*

**Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321).**

If subcontracts are to be let, Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. As set forth in 2 C.F.R. § 200.321(b)(1)-(5), such affirmative steps must include:

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