

A G R E E M E N T

THIS CONTRACT (“Contract” or “Agreement”) is made and entered into between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “City”), and **JKS INDUSTRIES, LLC**, a Colorado limited liability company with its principal place of business located at 747 Sheridan Blvd, Unit 9A, Lakewood, Colorado 80214 (the “Contractor”), jointly “the Parties.”

WHEREAS, the Mayor declared a state of local disaster emergency on March 12, 2020 pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020 on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020 due to the COVID-19 crisis;

WHEREAS, the City awarded the Agreement to the Contractor as a result of a competitive selection process conducted by the City in accordance with its rules and procedures;

WHEREAS, to respond to the COVID-19 crisis in the City and County of Denver, Colorado, and pursuant to the declarations of emergency described above, the City wishes to retain Contractor for on-call abatement and remediation services; and

WHEREAS, the City wishes such work to be performed on an expedited, emergency basis.

The Parties agree as follows:

1. COORDINATION AND LIAISON:

Contractor shall fully coordinate all services under the Agreement with the Manager of the Denver Department of Public Health and Environment (DDPHE) (“Manager”) or, the Manager’s Designee. The Manager hereby designates the City’s Asbestos Program Manager as the Program Manager under the Agreement (“Program Manager”). Unless and until otherwise notified, Contractor shall submit all proposed statements of work, reports, correspondence, invoices, and all other submittals under the Agreement to the Program Manager.

2. SERVICES TO BE PERFORMED:

a. As the Manager directs, Contractor shall diligently undertake, perform, and complete:

- (1)** Asbestos, lead, mold, and environmentally regulated building

materials abatement, operation & maintenance, renovation and remediation services (“Remediation Services”);

(2) Management of all regulated asbestos-contaminated soils (“RACS”) (“RACS Management”);

(3) Building demolition to complete Remediation Services (“Building Demolition”) (including all activities that lead up to, relate to, and arise out of those Remediation Services, RACS Management and Demolition Services); and

(4) Provide all labor, equipment, supplies, and materials; properly dispose of waste and materials; produce all deliverables as required pursuant to the Agreement (including any notice to proceed related to or arising out of the Agreement); and do everything necessary to provide the City with the Remediation Services, RACS Management and Building Demolition (“Services” or “Work”).

b. Contractor shall perform all Services to the City’s satisfaction.

c. Contractor is ready, willing, and able to provide the services required by the Agreement.

d. Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. DEFINITIONS:

a. **Contract Time.** “Contract Time” is the total number of days from the date of the Notice to Proceed to the date of Final Completion of the Work. Substantial Completion shall occur prior to Final Completion. Contract Time may be further defined and divided into phases by the Technical Specifications. The Notice to Proceed may require completion on or before a certain specified date. The date of the Notice to Proceed is considered the first day of the Contract Time.

b. **Final Completion.** “Final Completion” of the Work occurs following Substantial Completion and when the Program Manager confirms in writing that the Contractor has completed the Work in accordance with the Contract, including completion of all punch list items, cleanup work and delivery of all required guarantees, warranties, licenses, releases and other required deliverables.

c. **Substantial Completion.** “Substantial Completion” of the Work means the

Work has progressed to the point that the City can beneficially occupy or utilize the Work for the purpose for which it is intended, and the Work complies with all applicable codes and regulations, including, if required, issuance of a certificate of occupancy, or certificate of suitability for use from the appropriate governmental agencies, as determined by the Manager in his sole discretion. The Program Manager will advise the Contractor in writing when Substantial Completion of the Work has been achieved.

d. Work Order and Notice to Proceed. “Work Order” and “Notice to Proceed” are used interchangeably herein, and it is the intent that work proposals including price proposals and scope, shall be incorporated by reference into each Notice to Proceed for the purposes of Substantial Completion, Final Completion and assessment of potential damages.

4. TERM: The Agreement will commence on the date of execution by the City and will expire three (3) years after the date of execution (the “Term”). Subject to the Manager’s prior written authorization, Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager. At the City’s sole discretion, the City may extend the Agreement under the same terms and conditions set forth in the Agreement for up to two additional one-year renewal terms by a written amendment to the Agreement. Contractor hereby agrees that if the City elects to extend the Agreement as stated above, that it shall extend the Agreement under the same terms and conditions set forth in the Agreement.

5. REQUEST FOR PRICING AND PROJECT AWARD:

a. To initiate work hereunder, the City may award Work Orders by mini-bid process for competitive bidding when warranted. Alternatively, the work may be awarded as a direct selection if an emergency exists or at the Program Manager’s discretion. Either way, the Contractor will be directed by the Program Manager whether to submit a lump sum cost proposal or time and materials not to exceed cost proposal. The selected Contractor shall provide detailed pricing information prior to executing a work order no matter the circumstances.

b. The Program Manager will request Contractor to submit written statement of work. Within the time period and manner requested by the Program Manager, Contractor shall provide a proposed statement of work, including a project timeline, all costs, and if applicable, estimated quantities and costs of materials, and any other information requested, to the Program Manager. In each proposed statement of work Contractor shall represent that: i) its proposed

statement of work was arrived at independently and submitted without collusion with any other contractor performing similar work for the City; and ii) the contents of the proposed statement of work have not been communicated by Contractor, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of Contractor or its surety on any bond furnished under the Agreement, and will not be communicated to any such person before issuance of the associated notice to proceed.

c. Services will be authorized by issuance of a notice to proceed (“NTP”). Contractor shall not commence any Services until it receives the NTP authorizing the performance of any Services. The City will not encumber funds for any Services until it issues an NTP. Notwithstanding any other term or condition of the Agreement, nothing in the Agreement places any obligation on the City to proceed with any phase beyond the latest phase authorized by a written NTP (or amendment thereto) or guarantees Contractor any minimum amount of work.

6. COMPENSATION AND PAYMENT:

a. **Fee:** As full and complete compensation for the services rendered and costs incurred under the Agreement, Contractor will be paid the lesser of either a maximum fee to be set forth in the applicable NTP and City-approved change orders, if any, or an amount based on Contractor's periodic invoices. Amounts billed for services rendered must be based on the rates provided in the Cost Schedule. The contractor shall provide the Cost Schedule and attach as **Exhibit B.**

b. Markup for Overhead and Profit:

(1) The Contractor shall be entitled an up to 15% markup on direct costs for:

- A. Subcontractor’s work, including labor;
- B. Materials and Supplies – incorporated in or consumed by the work; and
- C. Equipment – owned and/or rented (other than small tools) and incorporated in or consumed by the work.

(2) Rates and Markup are nonnegotiable for a period of three years.

(3) Contractor’s percentage markup on subcontractor work shall be considered to support the full cost of office supervisors and assistants, including all clerical and general office help; review and coordination; estimating; expediting; office equipment and supplies, telephone, fax, conformance to OSHA requirements, safety programs, and all other

general contractor company expenses. These percentage markups shall be applied one time only for each Work Order or Work Order Change and shall not pyramid in any way.

(4) Bonds, Insurance, Permits and Taxes shall be reimbursed at the actual cost associated with all required bond riders, insurance, permits, licenses, and sales, use or other taxes related to the Work.

(5) A Total Price to perform or complete the Work, the sum of all covered and uncovered work amount, must be in each Work Order.

(6) If it is later determined that the pricing was not correct due to inaccurate or incomplete pricing data by the Contractor or any subcontractor or supplier, the price shall be reduced accordingly and the Work Order cost modified by a Work Order Change.

c. **Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under the Agreement.

(1) Unless otherwise stated in a notice to proceed letter, the following support documentation must be included with every invoice to be considered a complete invoice:

- A. Entry and exit logs;
- B. Daily work logs;
- C. General Abatement Contractor License and Proof of Insurance;
- D. Employment Certificates;
- E. Waste Manifests (if applicable);
- F. Project Design (if applicable);
- G. Permit, Permit Application, Permit Modifications (if applicable);
- H. Project Schedule (if applicable);
- I. Manometer logs;
- J. Clearance report with air sample data; and
- K. Map and notes to material(s) abated.

(2) Partial invoices must include the required support documentation as of that invoice final work date.

d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION DOLLARS (\$1,000,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

7. KEY PERSONNEL:

a. Contractor shall provide experienced personnel to perform and complete Services under the Agreement utilizing the list of key personnel identified in **Exhibit C**. To the extent possible, Contractor shall provide advance written notice to the Manager of DDPHE requesting approval of any changes in key personnel. If advance notice of a change in personnel is not possible, Contractor shall inform the Manager of DDPHE within 72 hours of the change and request consent to substitution of key personnel.

b. If the Manager of DDPHE does not consent or determines that the performance of any key personnel is not acceptable, he shall notify Contractor of the determination and may give Contractor an opportunity to correct performance. If the Manager of DDPHE notifies Contractor that a substitution of key personnel or performance of Services by any key personnel is unacceptable, Contractor shall substitute such personnel within the period of time requested by the City.

8. ACCESS TO NON-CITY OWNED REAL PROPERTY:

When access to real property owned by third-parties must be gained to perform work under the Agreement, Contractor is responsible for obtaining the necessary permission and releases from the property owner to allow Contractor to gain access and work on non-City property. For access to private property temporarily under control of Denver Police or Fire

departments, Contractor must obtain permission to enter from the on-site commander and comply with all requested precautions.

9. STATUS OF CONTRACTOR:

Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

10. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to Contractor. However, nothing gives Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in Contractor's possession, custody, or control by whatever method the City deems expedient. Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT- INCOMPLETE".

11. EXAMINATION OF RECORDS:

Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

12. WHEN RIGHTS AND REMEDIES NOT WAIVED:

In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

13. LIQUIDATED DAMAGES; ADMINISTRATIVE COSTS; ACTUAL DAMAGES:

a. Time is of the essence of the Contract. In the event the Contractor fails to achieve Substantial Completion of the Work within the Contract Time or fails to meet any other time requirement or the time limit set forth in the Contract, after due allowance for any extension or extensions of time made in accordance with the provisions herein set forth, the Contractor shall be liable to the City for liquidated damages, and not as a penalty, in the amount stipulated therefore in the Contract Form or below. Such liquidated damages shall be assessed for each and every Day that the Contractor shall be in default, as established by said time limit or limits. The City shall have the right to deduct said liquidated damages from any amount due or that may become due the

Contractor, or to collect such liquidated damages from the Contractor or its surety.

b. Liquidated damages in the amount stipulated do not include any sums of money to reimburse the City for actual damages which may be incurred between Substantial Completion and Final Completion because of the Contractor's failure to achieve Final Completion within the Contract Time. For such delay in Final Completion, the Contractor shall reimburse the City, as a mitigation of City damages and not as a penalty, those administrative costs incurred by the City as a result of such failure. Representative hourly rates for such administrative costs are set out below. The Program Manager shall calculate the City's administrative costs based on such rates, as the same may be revised from time to time.

c. Liquidated damages in the amounts stipulated do not include any sums of money to reimburse the City for extra costs which the City may become obligated to pay on other contracts which were delayed or extended because of the Contractor's failure to complete the Work within the Contract Time. Should the City incur additional costs because of delays or extensions to other contracts resulting from the Contractor's failure of timely performance, the City will assess these extra costs against the Contractor, and these assessments will be in addition to the stipulated liquidated damages.

d. The City reserves all of its rights to actual damages from the Contractor for injury or loss suffered by the City from actions or omissions of the Contractor, including but not limited to any other breach or default of the Contract, outside of the scope of the above sections. The Contract Time, as that term is defined hereunder, shall be separately set out in each Work Order/NTP. Should the Contractor fail to complete all Work within the Contract Time allocated under that Work Order/NTP, the Contractor shall become liable to the City and County of Denver for liquidated damages on that Work Order, and not as a penalty, at the rate of **FIVE HUNDRED DOLLARS AND ZERO CENTS (\$500.00)** for each Day that the Contractor exceeds the time limits specified in each Work Order/NTP, unless a greater or lesser amount is provided for in the authorized Work Order.

e. Representative hourly rates for the City administrative costs shall be as follows for this Project:

Environmental Program Manager	\$69/hour
Client Program Manager	\$63/hour

Inspector	\$49/hour
Surveying, if necessary	\$100/hour

14. INSURANCE:

a. General Conditions: Contractor agrees to secure, at or before the time of execution of the Agreement, the following insurance covering all operations, goods or services provided pursuant to the Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-” VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of the Agreement and shall reference the City contract number listed on the signature page of the Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under the Agreement.

b. Proof of Insurance: Contractor shall provide a copy of the Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under the Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies

with all insurance requirements of the Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in the Agreement shall not act as a waiver of Contractor's breach of the Agreement or of any of the City's rights or remedies under the Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Business Auto Liability, and Contractors Pollution Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured and any other person or entity upon written request by the City.

d. Waiver of Subrogation: For all coverages required under the Agreement, Contractor's insurer shall waive subrogation rights against the City.

e. Subcontractors: All subcontractors (including independent contractors, suppliers or other entities providing goods or services required by the Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into the Agreement, that none of Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of the Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes the Agreement.

g. Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for

each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. Business Automobile Liability: Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy must be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

i. Contractors Pollution Liability: Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean-up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

j. Additional Provisions:

(1) For Commercial General Liability, the policy must provide the following:

- A.** That the Agreement is an Insured Contract under the policy;
- B.** Defense costs are outside the limits of liability;
- C.** A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
- D.** A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City

(2) For claims-made coverage:

A. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

B. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below

the required per occurrence limit, Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

15. DEFENSE AND INDEMNIFICATION:

a. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

c. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

16. FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS: Contractor is subject to all terms and conditions set forth in **Exhibit G, The**

FEMA Grant and Cooperative Agreement provisions, attached and incorporated herein by reference.

17. TAXES, CHARGES AND PENALTIES:

a. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, et seq. Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

b. Contractor is solely liable and responsible for and shall pay all fines, fees, penalties, and any other monetary infraction of any nature arising out of or related to Services, including, without limitation, failure to comply with laws and regulations applicable to the Services and failure to comply with the deadlines imposed for Services. This obligation survives the expiration or termination of the Agreement.

18. ASSIGNMENT; SUBCONTRACTING:

Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under the Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of the Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subcontractor or assign.

19. INUREMENT:

The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

20. NO THIRD PARTY BENEFICIARY:

Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than

the City or Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

21. NO AUTHORITY TO BIND CITY TO CONTRACTS:

Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

22. SEVERABILITY:

Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

22. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given Contractor written notice describing the conflict.

23. NOTICES:

All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City as set forth below. Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon

deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

Executive Director, Department of Public Health and Environment
Environmental Quality Division, Asbestos Program Manager
101 West Colfax Ave., Suite 800
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

24. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. Contractor certifies that:

(1) At the time of its execution of the Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

c. Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor that fails to certify to Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement, through participation in either the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of

the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8- 17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

25. DISPUTES:

All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56- 106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

26. GOVERNING LAW; VENUE:

The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda,

includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

27. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under the Agreement, Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Contractor shall insert the foregoing provision in all subcontracts.

28. COMPLIANCE WITH M/WBE REQUIREMENTS:

The Agreement is subject to all applicable provisions of Divisions 1 and 3 of Article III, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. and referred to in this Contract as the “M/WBE Ordinance.” Without limiting the general applicability of the foregoing, the Contractor acknowledges its continuing duty, pursuant to Sections 28-72, 28-73, and 28-75 of the D.R.M.C., to maintain throughout the duration of this Contract, compliance with the ZERO PERCENT (0%) M/WBE participation commitment, upon which the City approved the award of this Contract to the Contractor and the Contractor further acknowledges that failure to maintain the participation commitments or otherwise comply with the requirements of the M/WBE Ordinance will subject the Contractor to sanctions in accordance with Section 28-77 of the D.R.M.C. Nothing contained in this provision or in the M/WBE Ordinance negates the City’s right to prior approval of subcontractors, or substitutes therefore, under this Contract.

29. PREVAILING WAGE:

a. Contractor’s employees and those of its subcontractors are subject to the payment of prevailing wages pursuant to § 20-76 et seq., D.R.M.C. By executing the Agreement, Contractor covenants and affirms that it is familiar with the prevailing wages provisions and is prepared to pay or cause to be paid prevailing wages for the affected services to be provided under the Agreement by Contractor or its subcontractors. The prevailing wages provisions are applicable to all contracts in excess of **Two Thousand Dollars (\$2,000.00)**.

b. Contractor shall pay every covered worker, as defined in § 20-76(a) D.R.M.C., a living wage as provided in § 20-76, D.R.M.C. A copy of the applicable prevailing wage rate schedule is attached as **Exhibit F**.

c. In accordance with § 20-76(b) and (d), D.R.M.C., the following mandatory provisions are included:

(1) The minimum wages to be paid for every covered worker may not be less than the scale of wages from time to time determined under § 20-76(b) and (c) to be the prevailing wages. Contractor or its subcontractor shall pay covered workers performing Services under the Agreement the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the Auditor's specifications, and any addenda thereto, on the actual date of proposal opening, regardless of any contractual relationship that may be alleged to exist between Contractor or subcontractor and the covered workers. Increases in prevailing wages subsequent to the date of the Agreement for a period not to exceed one (1) year is mandatory on either Contractor or subcontractors. Future increases in living wages on contracts whose period of performance exceeds one (1) year is mandatory for Contractor and subcontractors only on the yearly anniversary date of the Agreement. The City agrees to reimburse Contractor for mandatory increases in prevailing wages that occur on or after January 1, 2013. Decreases in prevailing wages subsequent to the date of the Agreement for a period not to exceed one (1) year are not permitted. Decreases in prevailing wages on contracts whose period of performance exceed one (1) year are not effective except on the yearly anniversary date of the Agreement.

(2) Contractor and its subcontractors shall pay all covered workers at least once a week the full amounts of wages accrued at the time of payment, except that Contractor and subcontractor shall pay non- construction workers, such as janitorial or custodial workers performing services under the Agreement, at least twice per month.

(3) Contractor shall post in a prominent and easily accessible place at the site of work the scale of wages to be paid by Contractor and all subcontractors working under Contractor.

(4) If Contractor or any subcontractor fails to pay wages required by the Agreement, no warrant or demand for payment to Contractor will be honored until Contractor furnishes the Auditor evidence satisfactory to the Auditor that the required wages by the Agreement have been paid.

(5) Contractor shall furnish to the Auditor each week during which Services were performed or are in progress under the Agreement, a true and correct copy of the payroll records of all covered workers employed under the Agreement, either by Contractor or

subcontractors. These payroll records must include, among other things, information showing the number of hours worked by each covered worker employed under the Agreement, the hourly pay of the covered workers, any deductions made from pay, and the net amount of pay received by each covered worker for the period covered by the payroll.

(6) The copy of the payroll record must be accompanied by a sworn statement of Contractor that the copy is a true and correct copy of the payroll records of all covered workers working under the Agreement either for Contractor or subcontractors, that payments were made to them as set forth in the payroll records, that no deductions were made other than those set forth in the payroll records, and that all covered workers performing Services under the Agreement, either by Contractor or by any subcontractor, have been paid the prevailing wages as set forth in the Auditor's specifications.

(7) If any covered worker employed by Contractor or any subcontractor under the Agreement has been or is being paid a rate of wages less than the rate of wages required by the Agreement, the City may, by written notice to Contractor, suspend or terminate Contractor's right to proceed with Services, or any part of the Services for which there has been a failure to pay the required wages, and in the event of termination may prosecute the Services to completion by contract or otherwise, and Contractor and any sureties will be liable to the City for any excess costs occasioned the City thereby.

30. PAYMENT OF CITY MINIMUM WAGE:

Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

31. BONDS:

Contractor shall furnish a Performance and Payment Bond, in the form attached as **Exhibit E**, covering all Services performed under the Agreement. Contractor shall provide a bond in the amount of **Two Hundred Thousand Dollars and No Cents (\$200,000.00)** at the time it

executes the Agreement. If the dollar amount of Services to be performed under any NTP, including change orders thereto, exceeds this amount, Contractor shall provide a properly executed bond Change Rider, in the form attached as **Exhibit E-1**, in an amount that will increase the penal sum of the Bond to an amount at least equal to amount set forth in the applicable NTP, including any change orders thereto.

32. COMPLIANCE WITH ALL LAWS: COMPLIANCE WITH ALL LAWS:

a. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

b. Without limiting the foregoing, Contractor shall comply with all local, state, and federal regulations regarding environmental protection, worker protection, and public safety, at all times, including, without limitation:

- (1)** Solid and hazardous waste management per the Resource Conservation and Recovery Act (RCRA) as administered by state authorities;
- (2)** Workplace safety per the Occupational Safety and Health Act;
- (3)** Transportation safety per title 49 of the Code of Federal Regulations;
- (4)** Radioactive materials management per title 10 of the Code of Federal Regulations;
- (5)** Wastewater discharge per the Clean Water Act and applicable regulations and guidelines promulgated by the Colorado Department of Public Health and Environment;
- (6)** Metro Wastewater Reclamation District Rules and Regulations Governing the Operation, Use, and Services of the System;
- (7)** International Fire Code, as amended and adopted by the City; and
- (8)** Relevant building and electrical codes.

33. LEGAL AUTHORITY:

Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents

and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

34. NO CONSTRUCTION AGAINST DRAFTING PARTY:

The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

35. ORDER OF PRECEDENCE:

In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

36. INTELLECTUAL PROPERTY RIGHTS:

The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by Contractor and paid for by the City pursuant to the Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. Contractor shall disclose all such items to the City and shall register such items in the name of the City and County of Denver unless the Manager directs otherwise in writing. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," Contractor (by the Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity

37. SURVIVAL OF CERTAIN PROVISIONS:

The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without

limiting the generality of this provision, Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

38. ADVERTISING AND PUBLIC DISCLOSURE:

Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

39. CITY EXECUTION OF AGREEMENT:

The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

40. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:

The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

41. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:

Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

42. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability

of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

43. COUNTERPARTS OF THE AGREEMENT:

The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

EXHIBIT LIST

Exhibit A – Scope of Work

Exhibit B – Cost Schedule

Exhibit C – Key Personnel

Exhibit D – Certificate of Insurance

Exhibit E – Performance and Payment Bond

Exhibit E-1 Change Rider

Exhibit F – Prevailing Wage Schedule (Heavy Construction Projects)

Exhibit G – FEMA Grant and Cooperation Agreement Specific Provisions

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number: ENVHL-202054421-00
Contractor Name: JKS INDUSTRIES, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

ENVHL-202054421-00
JKS INDUSTRIES, LLC

By:  DocuSigned by:
Jeffrey Knight
691G8626DFE5492...

Name: Jeffrey Knight
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A

Scope of Work / Services

As the Manager directs, Contractor shall diligently undertake, perform, and complete all asbestos, lead-based paint, and mold abatement services (“Abatement Services”) and all asbestos-contaminated soils (“ACS”) management and remediation services (including all activities that lead up to, relate to, and arise out of those management and remediation services) (“ACS Management and Remediation Services”); conduct operation and maintenance activities related to or arising out of Abatement Services and ACS Management and Remediation Services; provide all labor, equipment, supplies, and materials; dispose of waste and materials; produce all deliverables as required pursuant to the Agreement (including any notice to proceed related to or arising out of the Agreement); and do everything necessary to provide the City with the Abatement Services and ACS Management and Remediation Services (“Services” or “Work”). Contractor shall perform all Services to the City’s satisfaction.

EXHIBIT B**Cost Schedule**

<u>Item</u>	<u>Classification</u>	<u>Work Description</u>	<u>Salaried Position</u> (yes or no)	<u>Hourly Position</u> (yes or no)	<u>Not Available to a Specific Prevailing Wage Classification</u>	<u>Straight Time Hourly</u>	<u>Overtime Hourly</u>
1	<u>Project Manager</u>	<u>Main Contact for Contract, Cost Proposals & Billing, Project Coordination</u>	Yes	No		\$75.00	\$85.00
2	<u>Superintendent</u>	<u>Project Contact and Oversight</u>	No	Yes		\$65.00	\$80.00
3	<u>Asbestos Supervisor (non-asbestos laborer)</u>	<u>State Certified Onsite Supervisor for Asbestos Worker & Laborer</u>	No	Yes		\$60.00	\$75.00
4	<u>Common Worker Field Supervisor</u>	<u>Onsite Supervisor for Common Worker & Laborer</u>	No	Yes		\$38.00	\$45.00
5	<u>Expert Witness</u>	<u>Litigation & Preparation</u>	No	Yes		\$75.00	\$85.00
6	<u>Administrative Support</u>	<u>As Needed Non-Field Laborer</u>	Yes	No		\$45.00	N/A
<u>Item</u>	<u>Classification</u>	<u>Work Description</u>	<u>Salaried Position</u> (yes or no)	<u>Hourly Position</u> (yes or no)	<u>Hourly Minimum Rate per Prevailing Wage (Rate + Fringes)</u>	<u>Straight Time Flat Rate*</u>	<u>Overtime Flat Rate*</u>
7	<u>Asbestos Laborer</u>	<u>State Certified Asbestos Worker Performing Abatement of asbestos or remediation of hazardous materials inside or outside of a building</u>	No	Yes	<u>\$29.58</u>	\$58.50	\$71.00
8	<u>Common Worker</u>	<u>Non-Asbestos & Non-Regulated Material/Demolition & Cleanup Laborer</u>	No	Yes	<u>\$15.92</u>	\$38.00	\$45.00
9	<u>Laborer</u>	<u>Yardman</u>	No	Yes	<u>\$25.90</u>	\$54.00	\$67.00
10	<u>Truck Driver</u>	<u>Pick-Up</u>	No	Yes	<u>\$26.33</u>	\$55.00	\$68.00
11	<u>Truck Driver</u>	<u>Tandem/Semi Truck and Water</u>	No	Yes	<u>\$26.96</u>	\$55.00	\$68.00
12	<u>Power Equipment Operator</u>	<u>Backhoe</u>	No	Yes	<u>\$18.84</u>	\$45.00	\$55.00
13	<u>Power Equipment Operator</u>	<u>Trackhoe</u>	No	Yes	<u>\$39.10</u>	\$67.00	\$80.00
14	<u>Power Equipment Operator</u>	<u>Front End Loader</u>	No	Yes	<u>\$20.47</u>	\$45.00	\$55.00
15	<u>Power Equipment Operator</u>	<u>Skid Loader</u>	No	Yes	<u>\$19.78</u>	\$45.00	\$55.00

<u>16</u>	<u>Power Equipment Operator</u>	<u>Wheel Excavator Supplemental Group 6</u>	No	Yes	<u>\$37.03</u>	\$65.00	\$78.00
<u>17</u>	<u>Power Equipment Operator</u>	<u>Bulldozer</u>	No	Yes	<u>\$38.95</u>	\$65.00	\$78.00
<u>18</u>	<u>Electrician</u>	<u>Licensed and Capable of Meeting CDPHE PPE Requirements for Asbestos Containment Entry</u>	No	Yes	<u>\$52.68</u>	\$90.00	N/A
<u>19</u>	<u>Plumber</u>	<u>Licensed and Capable of Meeting CDPHE PPE Requirements for Asbestos Containment Entry</u>	No	Yes	<u>\$55.52</u>	\$90.00	N/A
<u>*Hourly Rate Minus Prevailing Wage = Flat Rate</u>							

EXHIBIT C**Key Personnel**

Key Personnel - Name	JKS Industries, LLC Titles	Project Time Commitment Percentage
Jeffrey Knight	President Program Manager	100%
Ruben Domingo	Sr. Project Manager/Estimator	100%
Carlos Luch	Superintendent/Supervisor	100%
Andre Williams	Superintendent/Supervisor	100%
Maria Flores	Project Administrator	100%
Sal Torres	Safety Manager	100%



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Commercial Risk Solutions, 6600 E Hampden Ave Ste 200, Denver CO 80224. CONTACT NAME: Katie Smothers, PHONE: 303-996-7801, FAX: 303-757-7719, E-MAIL: ksmothers@crsdenver.com. INSURER(S) AFFORDING COVERAGE: Pinnacol Assurance, Hanover Insurance Co., Everest Indemnity Ins. Co., Progressive Insurance Co.

COVERAGES CERTIFICATE NUMBER: 1834069436 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Excess Liab, Workers Compensation and Employers' Liability, and Leased and Rented Equipment/Pollution Liability/Errors & Omissions.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Contract: ENVHL-202054421

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured.

CERTIFICATE HOLDER

CANCELLATION

Env. Quality Division, Dept. of Public Health & Environment, City and County of Denver, 101 W. Colfax Ave., Suite 800, Denver CO 80202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Handwritten signature of authorized representative.

Exhibit E

CITY AND COUNTY OF DENVER DEPARTMENT OF ENVIRONMENTAL HEALTH Environmental Quality Division

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned JKS INDUSTRIES, LLC, 747 Sheridan Boulevard, Unit 9A, Lakewood, Colorado 80214, a corporation organized and existing under and by virtue of the laws of the State of Colorado, hereafter referred to as the "Contractor", and NATIONAL AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", in the penal sum of **Two Hundred Thousand Dollars and No Cents (\$200,000.00)**, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden Contractor has entered into a written agreement with the City for providing services set forth in the agreement having **Contract ID No. ENVHL-202054421-00**, which includes furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete the services authorized by each notice to proceed pursuant to that Agreement (including changes to any notice to proceed – collectively notice to proceed and changes thereto are referred to as "NTP"), and has bound itself to complete the services within the time or times specified as designated, defined and described in the Agreement, or NTP, and in accordance with the terms of the Agreement, a copy of the Agreement being made a part hereof;

NOW, THEREFORE, if the Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by the Agreement, including each NTP, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of the Agreement, and shall fully indemnify and save harmless the City from all damages, claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of the Agreement, its agents, or employees with relation to the services; and shall fully reimburse and repay to the City all costs, damages, and expenses that it may incur in making good any default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs or replacements for the full guarantee period provided in the Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if Contractor at all times promptly makes payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of services provided for in the Agreement and that if the Contractor indemnifies and saves harmless the City for the extent of any and all payments in connection with the carrying out of the Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if the Contractor fails to duly pay for any labor, services, supplies, equipment, or materials performed, used or consumed by Contractor or its subcontractors in performance of the services contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the services, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to contracts with others in connection with the Agreement, or the services to be performed there under, or any Notice to Proceed, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to

*****Signatures by CAO and the Mayor will be provided later and shall be fully incorporated herein*****

the terms of the Agreement, any Notice to Proceed, or the services.
IN WITNESS WHEREOF, Contractor and Surety have executed these presents as of

_____ JUNE 21 _____, 20 20.

JKS INDUSTRIES, LLC
Contractor

By: _____
President

Attest:
By: _____
Secretary

NATIONAL AMERICAN INSURANCE COMPANY
Surety

By: _____
Attorney-In-Fact Douglas J. Rothey

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond).

APPROVED AS TO FORM:
COUNTY
Attorney for the City and County of Denver

APPROVED FOR THE CITY AND
OF DENVER

By: _____
Assistant City Attorney

By: _____
MAYOR



By: _____
Manager
Department of Public Health and Environment

**NATIONAL AMERICAN INSURANCE COMPANY
CHANDLER, OKLAHOMA
POWER OF ATTORNEY**

Number: CBB0056062

DUPLICATES SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL ONLY WHEN ISSUED IN CONJUNCTION WITH THE ORIGINAL.

KNOW ALL MEN BY THESE PRESENTS: That the National American Insurance Company, a corporation duly organized under the laws of the State of Oklahoma, having its principal office in the city of Chandler, Oklahoma, pursuant to the following resolution, adopted by the Board of Directors of the said Company on the 8th day of July, 1987, to wit:

"Resolved, that any officer of the Company shall have authority to make, execute and deliver a Power of Attorney constituting as Attorney-in-fact, such persons, firms, or corporations as may be selected from time to time.

Resolved that nothing in this Power of Attorney shall be construed as a grant of authority to the attorney(s)-in fact to sign, execute, acknowledge, deliver or otherwise issue a policy or policies of insurance on behalf of National American Insurance Company.

Be It Further Resolved, that the signature of any officer and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such powers so executed and certified by facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond and documents relating to such bonds to which it is attached."

National American Insurance Company does hereby make, constitute and appoint

Douglas J. Rothery, Cynthia M. Burnett, Erik E. Ulibarri

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred in its name, places and stead, to sign, execute, acknowledge and deliver in its behalf, and its act and deed, as follows:

To bind the company for bonds, not to exceed \$4,000,000.00 for any single bond. And to bind National American Insurance Company thereby as fully and to the same extent as if such bonds and documents relating to such bonds were, signed by the duly authorized officer of the National American Insurance Company, and all the acts of said Attorney(s) pursuant to the authority herein given, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the National American Insurance Company has caused these presents to be signed by any officer of the Company and its Corporate Seal to be hereto affixed.



NATIONAL AMERICAN INSURANCE COMPANY

W. Brent LaGere, Chairman & Chief Executive Officer

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

On this 26th day of September, A.D. 2017, before me personally came W. Brent LaGere, to me known, who being by me duly sworn, did depose and say; that he resides in the County of Lincoln, State of Oklahoma; that he is the Chairman and Chief Executive Officer of the National American Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name, thereto by like order.



**Notary Public
My Commission Expires April 8, 2022
Commission #02006203**

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

I, the undersigned, Secretary of the National American Insurance Company, an Oklahoma Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force.

Signed and Sealed at the City of Chandler.

Dated the _____ day of _____, _____



R. Patrick Gilmore, Secretary

**Exhibit E-1
Change Rider**

Notice to Proceed No. _____

TO BE ATTACHED TO AND FORM PART OF

PERFORMANCE AND PAYMENT _____ NO: (TYPE OF BOND)

IN FAVOR OF: CITY AND COUNTY OF DENVER
(OBLIGEE)

ON BEHALF OF: _____
(PRINCIPAL)

EFFECTIVE: _____
(ORIGINAL EFFECTIVE DATE)

IT IS AGREED THAT, in consideration of the original premium charged for this bond, and any additional premium that may be properly chargeable as a result of this change rider,

The Surety, _____, hereby gives is consent to:

- INCREASE BOND PENALTY CHANGE THE NAME OF PRINCIPAL
- DECREASE BOND PENALTY CHANGE THE ADDRESS OF THE PRINCIPAL
- CHANGE THE EFFECTIVE DATE CHANGE THE EXPIRATION DATE
- OTHER: _____

of the attached bond FROM: _____

TO: _____

EFFECTIVE

PROVIDED, however, that the attached bond is subject to all its agreements, limitations, and conditions except as herein expressly modified, and that the liability of the Surety under the attached bond as changed by this rider is not cumulative.

SIGNED AND SEALED THIS _____ DAY OF _____ 20_____.

_____ **INSURANCE**

_____ By: _____

(witness)

(Attorney-in-Fact) (Seal)

ACCEPTED BY OBLIGEE

_____ By: _____



TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Ryland Feno, Classification & Compensation Technician II
DATE: February 03, 2020
SUBJECT: Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, January 31, 2020** and applies to the City and County of Denver for **HEAVY CONSTRUCTION PROJECTS** in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20200002
Superseded General Decision No. CO20190002
Modification No. 1
Publication Date: 01/31/2020
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

***Career Service Board approved to adjust all Davis Bacon classifications under \$13.00 to comply with the city's minimum wage. The effective date is August 15, 2019. See page 7 for reference.**

Office of Human Resources
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202
p: 720.913.5751 | f: 720.913.5720
www.denvergov.org/humanresources

"General Decision Number: CO20200002 01/31/2020

Superseded General Decision Number: CO20190002

State: Colorado

Construction Type: Heavy

Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties in Colorado.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020
1	01/31/2020

ASBE0028-001 07/01/2019

Rates Fringes

Asbestos Workers/Insulator
(Includes application of
all insulating materials,

protective coverings,
 coatings and finishings to
 all types of mechanical
 systems).....\$ 32.98 14.73

BRCO0007-004 01/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON AND WELD COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 29.52	10.48

BRCO0007-006 05/01/2018

EL PASO AND PUEBLO COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 25.88	10.34

ELEC0012-004 06/01/2019

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN		
Electrical contract over \$1,000,000.....	\$ 27.50	12.50+3%
Electrical contract under \$1,000,000.....	\$ 24.85	12.50+3%

ELEC0068-001 06/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON, LARIMER, AND WELD COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 36.50	16.18

ELEC0111-001 03/01/2019

	Rates	Fringes
Line Construction:		
Groundman.....	\$ 20.41	13.75%+\$6.20
Line Equipment Operator.....	\$ 28.98	13.75%+\$6.20

Lineman and Welder.....\$ 44.92 25.25%+\$5.75

 ELEC0113-002 06/01/2019

EL PASO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 32.60	16.23

 ELEC0969-002 06/01/2019

MESA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 25.20	10.06

 ENGI0009-001 05/01/2018

	Rates	Fringes
Power equipment operators:		
Blade: Finish.....	\$ 28.57	10.70
Blade: Rough.....	\$ 28.25	10.70
Bulldozer.....	\$ 28.25	10.70
Cranes: 50 tons and under..	\$ 28.40	10.70
Cranes: 51 to 90 tons.....	\$ 28.57	10.70
Cranes: 91 to 140 tons.....	\$ 29.55	10.70
Cranes: 141 tons and over...	\$ 31.07	10.70
Forklift.....	\$ 27.87	10.70
Mechanic.....	\$ 28.73	10.70
Oiler.....	\$ 27.49	10.70
Scraper: Single bowl under 40 cubic yards.....	\$ 28.40	10.70
Scraper: Single bowl, including pups 40 cubic yards and over and tandem bowls.....	\$ 28.57	10.70
Trackhoe.....	\$ 28.40	10.70

 * IRON0024-003 11/01/2019

	Rates	Fringes
Ironworkers:.....	\$ 30.85	22.26
Structural		

 LABO0086-001 05/01/2009

	Rates	Fringes
--	-------	---------

Laborers:

Pipelayer.....\$ 18.68 6.78

PLUM0003-005 06/01/2017

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
JEFFERSON, LARIMER AND WELD COUNTIES

Rates Fringes

PLUMBER.....\$ 39.08 16.44

PLUM0058-002 07/01/2018

EL PASO COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 32.75 14.85

PLUM0058-008 07/01/2018

PUEBLO COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 32.75 14.85

PLUM0145-002 07/01/2016

MESA COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 35.17 11.70

PLUM0208-004 06/01/2016

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
JEFFERSON, LARIMER AND WELD COUNTIES

Rates Fringes

PIPEFITTER.....\$ 37.10 16.62

* SHEE0009-002 07/01/2019

Rates Fringes

Sheet metal worker.....\$ 34.62 17.95

* TEAM0455-002 07/01/2019

	Rates	Fringes
Truck drivers:		
Pickup.....	\$ 21.91	4.42
Tandem/Semi and Water.....	\$ 22.54	4.42

SUCO2001-006 12/20/2001

	Rates	Fringes
BOILERMAKER.....	\$ 17.60	
Carpenters:		
Form Building and Setting...	\$ 16.97	2.74
All Other Work.....	\$ 15.14	3.37
Cement Mason/Concrete Finisher...	\$ 17.31	2.85
IRONWORKER, REINFORCING.....	\$ 18.83	3.90
Laborers:		
Common.....	\$ 11.22	2.92
Flagger.....	\$ 8.91	3.80
Landscape.....	\$ 12.56	3.21
Painters:		
Brush, Roller & Spray.....	\$ 15.81	3.26
Power equipment operators:		
Backhoe.....	\$ 16.36	2.48
Front End Loader.....	\$ 17.24	3.23
Skid Loader.....	\$ 15.37	4.41

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

**Office of Human Resources
Supplemental Rates
(Specific to the Denver Projects)
(Supp #74, Revised: 08-21-2019)**

Classification		Base	Fringe
Ironworker	Ornamental	\$24.80	\$10.03
Laborer	Group 1	\$18.18	\$8.27
	Group 2	\$21.59	\$8.61
Laborer (Common)		\$13.00	\$2.92
Laborer (Flagger)		\$13.00	\$3.80
Laborer (Landscape)		\$13.00	\$3.21
Laborer (Janitor)	Janitor/Yardmen	\$17.68	\$8.22
Laborer (Asbestos)	Removal of Asbestos	\$21.03	\$8.55
Laborer (Tunnel)	Group 1	\$18.53	\$8.30
	Group 2	\$18.63	\$8.31
	Group 3	\$19.73	\$8.42
	Group 4	\$21.59	\$8.61
	Group 5	\$19.68	\$8.42
Line Construction	Lineman, Gas Fitter/Welder	\$36.88	\$9.55
	Line Eq Operator/Line Truck Crew	\$25.74	\$8.09
Millwright		\$28.00	\$10.00
Power Equipment Operator	Group 1	\$22.97	\$10.60
	Group 2	\$23.32	\$10.63
	Group 3	\$23.67	\$10.67
	Group 4	\$23.82	\$10.68
	Group 5	\$23.97	\$10.70
	Group 6	\$24.12	\$10.71
	Group 7	\$24.88	\$10.79
Power Equipment Operator (Tunnels above and below ground, shafts and raises):	Group 1	\$25.12	\$10.81
	Group 2	\$25.47	\$10.85
	Group 3	\$25.57	\$10.86
	Group 4	\$25.82	\$10.88
	Group 5	\$25.97	\$10.90
	Group 6	\$26.12	\$10.91
	Group 7	\$26.37	\$10.94
Truck Driver	Group 1	\$18.42	\$10.00
	Group 2	\$19.14	\$10.07
	Group 3	\$19.48	\$10.11
	Group 4	\$20.01	\$10.16
	Group 5	\$20.66	\$10.23
	Group 6	\$21.46	\$10.31

Go to <http://www.denvergov.org/Auditor> to view the Prevailing Wage Clarification Document for a list of complete classifications used.

EXHIBIT G

FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS

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

Federal Equal Opportunity Clause.

(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.

Compliance with the Contract Work Hours and Safety Standards Act.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any

other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS.

Federal Water Pollution Control Act

(4) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(5) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS."

Suspension and Debarment

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

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). 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 (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

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

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

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

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

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

PROCUREMENT OF RECOVERED MATERIALS

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

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

Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>."

ADDITIONAL PROVISIONS:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, HHS or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator, HHS or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

The contractor shall not use the DRS seal(s), logos, crests, or reproductions of flags or likenesses of DRS agency officials without specific FEMA or HHS pre- approval."

This is an acknowledgement that FEMA or HHS financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA or HHS policies, procedures, and directives.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.