

**MEMORANDUM OF UNDERSTANDING
REGARDING PREPARATION OF A
MULTI-JURISDICTIONAL LOCAL HAZARD MITIGATION PLAN**

This Memorandum of Understanding regarding Preparation of a Multi-jurisdictional Local Hazard Mitigation Plan (“MOU”) is entered into as of _____ (the “Effective Date”) by and between the City of Union City, a California municipal corporation (“Union City”), the City of Newark, a California municipal corporation (“Newark”), and the City of Fremont, a California municipal corporation (“Fremont”), the Alameda County Water District, a California water district (“ACWD”), and Union Sanitary District, a California sanitary district (“USD”). Union City, Newark, Fremont, ACWD, and USD may each be referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, a Local Hazard Mitigation Plan (LHMP) is a plan that outlines processes for identifying and prioritizing the natural hazards, risks, and vulnerabilities within local communities; and

WHEREAS, the development, approval and update of a LHMP is required under the federal Disaster Mitigation Act of 2000 in order for local jurisdictions to qualify for certain types of funding; and

WHEREAS, the requirements of the federal Disaster Mitigation Act of 2000 recognize certain benefits to, and allow for, Multi-jurisdictional LHMPs; and

WHEREAS, the Parties desire to jointly prepare a Multi-jurisdictional LHMP for the geographic area of Fremont, Newark, and Union City (collectively, the “Tri-Cities”); and

WHEREAS, the Multi-jurisdictional LHMP will identify hazards, risks, and vulnerabilities within the Tri-Cities, as well as within those specific to each participating agency; and

WHEREAS, Fremont has applied for and been awarded a grant from the Federal Emergency Management Agency (“FEMA”) to assist with the preparation of the Multi-jurisdictional LHMP (the “FEMA Grant”); and

WHEREAS, the FEMA Grant is subject to the “Standard Mitigation Grant Program Conditions” attached hereto as Attachment 1.

WHEREAS, Fremont has completed a procurement process to hire a qualified consultant to prepare the Multi-jurisdictional LHMP and has entered into a contract with _____ (“Consultant”) for such purposes; and

WHEREAS, each Party has agreed to pay for a portion of the costs for Consultant to prepare the Multi-jurisdictional LHMP that are not otherwise covered by the FEMA Grant; and
WHEREAS, the Parties desire to share the costs of the preparation of the Multi-jurisdictional LHMP subject to the terms and conditions of this MOU.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by reference.
2. **Preparation of Multi-jurisdictional LHMP.**
 - A. Fremont has entered into a contract with Consultant for the preparation of the Multi-jurisdictional LHMP (the “Service Agreement”). The Service Agreement shall require the Consultant to prepare a Multi-jurisdictional LHMP that complies with all federal and State hazard mitigation planning requirements to establish eligibility for funding under Federal Emergency Management Agency (FEMA) grant programs for each Party. The scope of work for the Consultant is attached hereto as Attachment 2, “Service Agreement” and incorporated herein. Consultant shall prepare a draft Multi-jurisdictional LHMP for review by the Parties. Each Party shall have the opportunity to provide comments, edits, and corrections to the Consultant. Thereafter, Consultant shall prepare a final Multi-jurisdictional LHMP that incorporates all of the comments from the Parties.
 - B. Fremont shall be responsible for managing and administering the Service Agreement, as well as supervising the Consultant, and shall coordinate with each of the Parties as appropriate. Fremont shall timely pay all invoices for preparation of the Multi-jurisdictional LHMP submitted by the Consultant. Fremont shall not replace or substitute the Consultant without the prior consent of each of the Parties.
3. **Payment.** Each Party shall pay a portion of the cost for the Consultant to prepare the Multi-jurisdictional LHMP. Fremont shall send an invoice to each Party for the amount due upon the completion of the final LHMP by Consultant, and approval by FEMA. Each Party shall pay such invoice within thirty (30) days. The amount of each Party’s payment shall not exceed the following amounts (each a “Contribution Payment”):
 - A. Union City: \$32,401.72
 - B. Newark: \$16,644.72
 - C. Fremont: \$95,183.88
 - D. ACWD: \$50,600.96
 - E. USD: \$55,168.72

Fremont’s contract with Consultant will prohibit the Consultant to incur costs greater than combined cost of the Contribution Payments and the FEMA Grant, except with prior written approval of the Parties.

Each Party shall account for and document employee time and labor committed to the LHMP project using its internal financial and human resources systems and the following documents, as provided in Attachment 3, “Timekeeping”:

- Project Worksheets
- Project Activity Logs
- Meeting Sign-in Sheets

Each Party understands that (1) failure to do so may preclude or diminish any potential reduction in the amount of its respective Contribution Payment, as specified above, which may be afforded through applying “in-kind” hourly contributions of time and labor toward federal and state matching funds requirements and that (2) no such reduction is guaranteed.

4. **Independent Parties**

Each party shall, at all times, remain an independent public agency solely responsible for all acts of its employees or agents, including any negligent acts or omissions.

5. **Indemnification**

Each party shall indemnify, defend and hold harmless the other party from and against any and all losses, liabilities, damages, claims, suits, fines, penalties, costs or expenses (including but not limited to attorneys' fees) of any kind to the extent caused by any negligent act or omission or willful misconduct of the indemnifying party in the performance of this MOU.

Fremont shall cause the LHMP Agreement to require the Consultant to indemnify, defend and hold harmless each of the participating Parties from and against any and all losses, liabilities, damages, claims, suits, fines, penalties, costs or expenses (including but not limited to attorneys' fees) of any kind arising out of, connected with, or related to Consultant's preparation of the LHMP, except for such liability caused by the sole negligence of willful misconduct of one of the Parties.

6. **Insurance**

Fremont shall, in the LHMP Agreement, require that the Consultant obtain and maintain the types and amounts of insurance listed in Attachment 2, covering its preparation of the Multi-jurisdictional LHMP.

7. **Notices**

All notices required or contemplated by this MOU shall be in writing and shall be delivered to the respective party as set forth in this section. Receipt of the notice shall be deemed to be effective upon the earlier of actual receipt by the Party or three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. Notices shall be sent as follows:

Union City:

City Manager
City of Union City
34009 Alvarado Niles Rd.
Union City, CA 94587

Newark:

City Manager
City of Newark
37101 Newark Blvd.
Newark, CA 94560

Fremont:

City Manager
City of Fremont
3300 Capitol Ave., Bldg. "A"
Fremont, CA 94538

ACWD:

General Manager
Alameda County Water District
43885 S. Grimmer Blvd.
Fremont, CA 94538

USD:

General Manager
Union Sanitary District
5072 Benson Road
Union City, CA 94587

7. Miscellaneous.

- A. Governing Law. The laws of the State of California shall govern this MOU.
- B. Compliance with Applicable Laws. Parties shall comply with all laws applicable to the performance of the work hereunder.
- C. Amendments. The parties may amend this MOU only by a writing signed by all the parties.
- D. Assignment. This MOU, and any portion thereof, shall not be assigned or transferred, nor shall any of either party's duties be delegated, without the written consent of the other party. Any attempt to assign or delegate this MOU without the written consent of the other party shall be void and of no force or effect.
- E. The waiver of any breach of a specific provision of this MOU does not constitute a waiver of any other breach of that term or any other term of this Agreement. No waiver of any provision of this MOU shall be valid unless such waiver is in writing.
- F. Severability. If a court of competent jurisdiction finds or rules that any provision of this MOU is invalid, void, or unenforceable, the provisions of this MOU not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other provision of this MOU.
- G. Counterparts. This MOU may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this MOU as of the Effective Date.

CITY OF UNION CITY

Joan Malloy, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF FREMONT

Karena Shackelford, City Manager

ATTEST:

District Clerk

APPROVED AS TO FORM:

City Attorney

UNION SANITARY DISTRICT

Paul Eldredge, General Manager

ATTEST:

District Clerk

5297266.1

CITY OF NEWARK

David Benoun, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**ALAMEDA COUNTY WATER
DISTRICT**

Ed Stevenson, General Manager

ATTEST:

District Clerk

APPROVED AS TO FORM:

District Counsel

APPROVED AS TO FORM:

District Counsel

ATTACHMENT 1

STANDARD MITIGATION GRANT PROGRAM CONDITIONS

FEMA Region IX, August, 2018

The following list applies to Recipients and Subrecipients accepting HMGP funds from the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security (DHS):

1. **Applicable Federal, State, and Local Laws and Regulations.** The Recipient/Subrecipient must comply with all applicable Federal, State, and Local laws and regulations, regardless of whether they are on this list or other project documents. DHS financial assistance Recipients and Subrecipients are required to follow the provisions of the State HMGP Administrative Plan, applicable Hazard Mitigation Assistance Uniform Guidance, and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located in Title 2 of the Code of Federal Regulations (CFR) Part 200, adopted by DHS in 2 CFR 3002.
2. **Financial Management Systems.** The Recipient and Subrecipient must maintain financial management systems to account for and track funds, as referenced in 2 CFR 200.302.
3. **Match or Cost Share.** Non-federal match or cost share must comply with 2 CFR 200.306, the scope of work (SOW), and any agreements among the Subrecipient, the Recipient, and FEMA.
4. **Budget Changes.** Unanticipated adjustments are permitted within the approved total cost. However, if costs exceed the federal share, the Subrecipient must notify the Governor's Authorized Representative (GAR) of overruns before implementation. The GAR shall submit a written request for approval to FEMA Region IX. The subaward must continue to meet HMGP requirements, including cost effectiveness and cost share. Refer to 2 CFR 200.308 for additional information.
5. **Real Property and Land.** The acquisition, use, and disposition must comply with 2 CFR 200.311.
6. **Equipment.** The acquisition, use, and disposition must comply with 2 CFR 200.313.
7. **Supplies.** Upon project completion, FEMA must be compensated for unused supplies, exceeding \$5,000 (fair market value), and not needed for other federal programs. Refer to 2 CFR 200.314.
8. **Procurement.** Procurement procedures must be in conformance with 2 CFR 200.318-320.
9. **Monitoring and Reporting Program Performance.** The Recipient and Subrecipient must submit quarterly progress reports, as referenced in the 2 CFR 200.328 and State HMGP Administrative Plan.
10. **Records Retention.** In accordance with 2 CFR 200.333, financial/ programmatic records related to expenditures must be maintained at least 3 years after the date of Recipient's final expenditure report.
11. **Enforcement and Termination.** If the Recipient or Subrecipient fails to comply with the award or subaward terms, whether stated in a Federal statute or regulation, the State HMGP Administrative Plan, subapplication, a notice of award, an assurance, or elsewhere, FEMA may take one or more of the actions outlined in 2 CFR 200.338, including termination or partial termination of the award or subaward outlined in 2 CFR 200.339.
12. **Allowable Costs.** Funds are to be used for allowable costs in compliance with 2 CFR 200.403, the approved SOW, and any agreements among the Subrecipient, Recipient, and FEMA.

13. **Non-Federal Audit.** The Recipient and Subrecipient are responsible for obtaining audits in accordance with the Single Audit Act of 1984, in compliance with 2 CFR 200.501.
14. **Debarred and Suspended Parties.** Recipients and Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 CFR 180. These regulations restrict federal financial assistance awards, subawards, and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in the federal assistance programs or activities.
15. **Equipment Rates.** Rates claimed for use of Subrecipient-owned equipment in excess of the FEMA- approved rates must be approved under State guidelines issued by the State Comptroller's Office or must be certified by the Recipient to include only those costs attributable to equipment usage less any fixed overhead and/or profit.
16. **Duplication of Funding between Public Assistance (PA) and HMGP.** Funding for PA Section 406 and HMGP Section 404 are permitted on the same facility/location, but the activities identified under each program must be distinct with separately accounted funds. At closeout, FEMA may adjust the funding to ensure the Subrecipient was reimbursed for eligible work from only one funding source.
17. **Historic Properties and Cultural Resources.** In compliance with 2 CFR 800, if a potential historic property or cultural resource is discovered during construction, the Subrecipient must cease work in the area and take all reasonable measures to avoid or minimize harm to the discovered property/resource. During construction, the Subrecipient will monitor ground disturbance activity, and if any potential archeological resources are discovered, will immediately cease work in that area, and notify the Recipient and FEMA. Construction in the area may resume with FEMA's written approval after FEMA's consultation, if applicable, with the State Historic Preservation Officer (SHPO).
18. **NEPA and Changes to the Scope of Work (SOW).** To comply with the National Environmental Policy Act (NEPA), and other Laws and Executive Orders, any change to the approved SOW shall be re-evaluated before implementation. Construction associated with a SOW change, prior to FEMA approval, may be ineligible for funding. Acceptance of federal funding requires environmental permits and clearances in compliance with all appropriate federal, state and local laws, and failure to comply may jeopardize funding.

Within their authority, the Recipient and Subrecipient must use of all practicable means, consistent with other essential policies, to create and maintain productive harmony for people and nature, and fulfill the social, economic, and other needs of present and future generations of Americans.

ATTACHMENT 2

SERVICE AGREEMENT

This Service Agreement (hereinafter "Agreement") is made and entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter "City"), and [NAME OF BUSINESS AND MUST INCLUDE A DESCRIPTION OF LEGAL ENTITY, I.E. LLC, PARTNERSHIP, CORPORATION, ETC.]_____, (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the "parties."

RECITALS

- A.** City requested a proposal from Consultant to perform the services generally including: TRI-CITIES MULTI-JURISDICTIONAL LOCAL HAZARD MITIGATION PLAN.
- B.** In response to the City's request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit "A," in return for the compensation described in this Agreement and Exhibit "B."
- C.** In reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C," the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 2. TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 3. PAYMENT.**
 - 3(A). Billing.** In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefor (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant's billing rates (set forth on Exhibit "B," attached hereto and incorporated herein by reference). The City shall

make payment to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City, only upon Cal OES and FEMA's approval of the Plan.

3(B). "Not to Exceed" Compensation. The compensation payable to Consultant for the services identified in Exhibit "A" shall not exceed \$187,500. Consultant shall not perform any services beyond the services identified in Exhibit "A" without prior written authorization from the City's Authorized Representative. If the City's Authorized Representative provides authorization for additional services, the total compensation payable to the Consultant under this Agreement shall not exceed \$187,500.

3(C). Consultant's Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant's Authorized Representative. Consultant understands that, in entering into this Agreement, the City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any) identified in Exhibit "C," attached hereto and incorporated herein by reference. Therefore, Consultant shall not replace its Authorized Representative, or any of the personnel or subconsultants identified in Exhibit "C," without the prior written consent of the City. All services under this Agreement shall be performed by, or under the direct supervision of, Consultant's Authorized Representative, as identified in Exhibit "C."

4(B). City's Authorized Representative. For the performance of Services under this Agreement, the City's Authorized Representative: _____, shall administer the Agreement unless otherwise designated in writing by the City's Authorized Representative or the City Manager.

5. INFORMATION AND DOCUMENTATION.

5(A). Information from City. City has made an effort to provide Consultant with all information necessary for Consultant's performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in City's possession.

5(B). Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements and in no event for less than four years.

Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

5(C). Ownership of Work Product. All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("work product"), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand by the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third-party without the prior written consent of the City.

6. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's agent and shall have no authority to act on behalf of the City or to bind the City to any obligation whatsoever unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

7. CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of California Government Code Section 1090 and the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other state and local laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.

8. NONDISCRIMINATION. Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, gender or other legally protected status. Consultant will include this requirement in any subcontract.

9. COMPLIANCE WITH LAW AND STANDARD OF CARE. Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall at all times comply with all applicable regulations, policies, procedures, and Federal Emergency Management Agency (FEMA) Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of [2 Code of Federal Regulations \(CFR\) 200.317 through 200.326](#) and more fully set forth in [Appendix II to Part 200](#) – Contract

Provisions for non-Federal Entity Contracts Under Federal Awards, which are included herein by reference under Exhibit E – Federal Provisions.

Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

- 10. LICENSES.** Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.
- 11. BUSINESS TAX.** The Consultant shall apply for and pay the business tax and registration tax in accordance with Fremont Municipal Code Chapter 5.05.
- 12. INSURANCE.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, and employees) in connection with the performance of services under this Agreement of the types and in the coverage amounts set forth in Exhibit D entitled “Insurance Requirements”. This Agreement identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements), and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Consultant, and prior to the commencement of any services, the Consultant shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Consultant shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.
- 13. REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager’s office by telephone at 510-284-4050, and Consultant shall promptly submit to the City’s Risk Manager and the City’s Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.
- 14. INDEMNIFICATION.** Consultant shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims, litigation, demands, damages, liabilities, costs, and expenses, including court costs, attorney’s fees, experts fees and other costs and fees of litigation or other dispute resolution proceedings (“Claims”) resulting or arising from Consultant’s performance, or failure to perform, under this Agreement, except Claims arising out of the City’s sole

negligence or willful conduct.

15. TERM OF THE AGREEMENT. The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit “A” and paragraph 2 of this Agreement or until _____. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit “B” or the maximum amount authorized under paragraph 3 of this Agreement.

16. DEFAULT. If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

17. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City

Attn:

To: Consultant

Attn:

18. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

19. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this

paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

20. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

21. ASSIGNMENT AND DELEGATION. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

22. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

23. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

24. CONFLICTS. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

25. NO THIRD-PARTY BENEFICIARIES. This Agreement is not intended to and shall not be construed to give any third-party any interest or rights (including, any third-party beneficiary rights), except as otherwise expressly provided for in this Agreement.

26. NEUTRAL INTERPRETATION. This Agreement represents the contributions of both parties, each of whom has had the opportunity to be represented by competent counsel. Accordingly, the rule stated in California Civil Code Section 1654 that a contract be construed against its drafter, shall have no application to the interpretation of this Agreement.

27. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

28. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their

respective successors and assigns.

29. COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the terms set forth herein.

CITY OF FREMONT

CONSULTANT [see selection below]
[**INSERT FULL LEGAL NAME**]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Title: City Attorney

[PLEASE SELECT THE APPROPRIATE SIGNATURE BLOCK FROM THE FOLLOWING SAMPLES]

CORPORATIONS
XYZ Land Development Inc,
a California Corporation

By: _____

Its: _____
*[needs to be officer from the operations side:
President, CEO, Vice President]*

By: _____

Its: _____
[needs to be officer from the finance side: treasurer, CFO, secretary]

One corporate signature is acceptable if the person is an officer if the signature is notarized (although we would like you to ask for a corporate resolution showing that person is authorized to sign). A single signature where the person is not a corporate officer – e.g. general manager, etc. – must be supported by a corporate resolution indicating that person has been delegated authority to sign contracts on behalf of the corporation

GENERAL PARTNERSHIPS
XYZ Land Development,

a California general partnership

By: _____

Its: General Partner

LIMITED PARTNERSHIPS

XYZ Land Development, LLP,
A California limited partnership

By: _____

Its: General Partner

[need limited partnership agreement or certificate filed with state showing the person or entity is the general partner]

In many cases the general partner will be a corporation so the signature block would look like this:

XYZ Land Development, LP,
A California limited partnership

By: ABC Developers, Inc.,
a California corporation

Its: General Partner

By: _____

Its: President, CEO, VP

By: _____

Its: Secretary, Treasurer, CFO

LIMITED LIABILITY COMPANY

XYZ Land Development, LLC,
a California Limited Liability Company

By: _____

Its: Managing Member

[need to see the operating agreement or certificate filed with secretary of state showing the person or entity is the managing member]

If the Managing Member is not an individual but is a business entity then you would indent the signature block for the appropriate persons to sign as in the example for the limited partnership above.

SERVICE AGREEMENT EXHIBIT A

Scope of Services

Project Objectives

The City of Fremont (City), Fire Department is seeking Proposals from qualified and responsible consultants to manage, coordinate, prepare, and administer the development of a Multi-jurisdictional Local Hazard Mitigation Plan ("Plan") – the scope of which shall include the Cities of Fremont, Newark, and Union City; Alameda County Water District (ACWD); and Union Sanitary District (USD), as well as invited participant public and non-governmental agencies with an interest in the Plan. The Plan shall be developed in full compliance with the provisions of 44 CFR Section 201.6, applicable Federal Emergency Management Agency (FEMA) and California Governor's Office of Emergency Services (Cal OES) rules and regulations concerning Local Hazard Mitigation Planning, and in conformance with industry best practices. The final project deliverable shall be a Cal OES and FEMA-approved Tri-Cities Multi-jurisdictional Local Hazard Mitigation Plan. The successfully prepared and approved Plan will permit any of the public agencies named above to be eligible to apply for FEMA Hazard Mitigation Assistance, including grant funding for capital improvements to mitigate risk. The preparation of the Plan and completion of all tasks described in the final, mutually agreed upon Scope of Services – as agreed between the City and the Consultant – shall constitute the "Project".

In executing the Project, the Consultant shall perform all necessary planning, administration, information collection, documentation, professional analysis, and work required for the preparation and adoption of the Plan. The Consultant shall foster a collaborative approach in executing the Project and developing the Plan, encouraging and facilitating participation among members of the Project Steering Committee, Participating Agencies, and the general public. The Consultant shall prepare and develop enhanced hazard and consequence modelling. Such modelling shall, at minimum, employ Advanced, Level 2 and Level 3 Hazus analyses – including but not limited to modelling of earthquake hazards – using FEMA Hazus software. All work products and materials developed or collected by the Consultant in the course of Project (e. g., Hazus modelling and data sets, plans, GIS layers, source materials, etc.) shall be made available to the City upon its request.

The Project scope shall include the following: Planning Area, Participating Agencies, Project Steering Committee, Planning Workgroups, Project Tasks (including Hazus modelling and analysis), and Timeline, specified below.

Planning Area

The Planning Area – located within Alameda County, California – consists of the geographic area of the City of Fremont, the City of Newark, and the City of Union City (which collectively constitutes the "Tri-Cities"). Additionally, the Planning Area includes the service areas of ACWD and USD. Although ACWD's service area primarily comprises the Tri-Cities, it also includes service area extending into a portion of Hayward.

Existing Local Hazard Mitigation Plans

The *City of Fremont 2016-2021 Local Hazard₁ Mitigation Plan* was adopted by the Fremont

City Council on December 20, 2016 and was subsequently approved by FEMA on January 9, 2017. The 2016-2021 *Union City/Newark Multi-Jurisdiction Hazard Mitigation Plan* was adopted by the Union City City Council July 11, 2017 and was subsequently approved by FEMA on August 18, 2017. The City of Newark City Council, and ACWD and USD Boards of Directors also adopted the *Union City/Newark Multi-Jurisdiction Hazard Mitigation Plan* prior to FEMA's approval. The new Plan will supersede the existing, aforementioned Local Hazard Mitigation Plans (LHMPs).

Hazus Analysis

The Consultant shall prepare and develop enhanced hazard and consequence modelling employing Advanced, Level 2 and Level 3 Hazus analyses – including but not limited to modelling of earthquake hazards – using FEMA Hazus software. For more information on FEMA's Hazus software, including definitions of Level 2 and Level 3 Hazus analysis, visit: <https://www.fema.gov/hazus>.

Fire Following Earthquake

The ideal project submission will include technical analysis and modelling of fire following earthquake under various seismic scenarios. This would include estimation of the number of ignitions and, of those, the number of resulting large fires – factoring in water supply complications and estimated available firefighting resources over time.

Community Rating System

The ideal project submission will include preparation of a framework for maximizing Community Rating System (CRS) credit eligibility under the National Flood Insurance Program's CRS, Activities 510 – Floodplain Management Planning and 610 – Flood Warning and Response.

Participating Agencies

The City of Fremont, City of Newark, City of Union City, ACWD, and USD are committed to a unified planning process, inviting participation of interested public agencies, non-governmental organizations, and the public. The City of Fremont, City of Newark, City of Union City, ACWD, and USD are committed to recommending the successful finalized Plan for adoption on the part of each respective jurisdiction's governing body and to otherwise securing FEMA's approval.

Participating agencies in the Project shall include representatives of component agencies (e. g. city management, fire services, law enforcement, emergency management, public works, operations, engineering, IT services, facilities management, risk management, finance, capital planning, etc.) of the following public jurisdictions as determined by each jurisdiction.

- City of Fremont
- City of Newark
- City of Union City
- ACWD
- USD

Additional participants may include representatives of:

- Alameda County Fire Department
- Alameda County Flood Control & Water Conservation District
- AC Transit
- Altamont Corridor Express Train
- Amtrak Capitol Corridor Train
- Bay Area Rapid Transit
- California Department of Education - California School for the Deaf
- California Department of Education - California School for the Blind
- California Department of Water Resources
- Caltrans
- East Bay Regional Park District
- Fremont Unified School District
- Kaiser Permanente Medical Center, Fremont
- Newark Unified School District
- New Haven Unified School District
- Ohlone Community College District
- Pacific Gas and Electric
- Palo Alto Medical Foundation, Fremont
- San Francisco Public Utilities Commission
- United States Geological Survey
- Washington Hospital Healthcare System
- Chevron Corporation
- Kinder Morgan
- Union Pacific Railroad
- Any number of commercial entities, including, but not limited to: rail transportation, energy, technology, telecommunications, and data service providers

Project Steering Committee

The Project Steering Committee shall include representatives of the participating agencies. Members of the Project Steering Committee shall be invited to the Kickoff Meeting and Project Steering Committee meetings.

Planning Workgroups

As necessary to prepare the Plan and execute the Project, additional meetings may be required to conduct, gather input for, or validate technical planning content in a more focused manner. Planning Workgroup Meetings shall be convened as necessary to develop planning content, and the scope of invitees should be limited as appropriate, based on factors such as agency, professional discipline, etc.

Project Tasks & Timeline

The Scope of Services shall include timely completion of all Project Tasks. The Proposer may choose to propose changes to the Project Tasks and timeline in its Exhibit “A”. The Proposer is encouraged to incorporate provisions concerning technical analysis and modelling of Fire Following Earthquake and a framework for maximizing CRS credit eligibility, as provided above, into its Exhibit “A”.

Project Governance

Project Manager

The Project Manager shall be the Emergency Services Manager of the Fremont Fire Department's Office of Emergency Services. The City of Fremont may appoint a qualified alternate.

Project Team

The Project Team shall consist of the Project Manager and designated emergency management staff of each of the Cities of Newark and Union City, ACWD, and USD. There shall be no more than one member-representative for each of the aforementioned cities or special districts. Any of the aforementioned cities or special districts may appoint an alternate.

Project Tasks

Task Name	Task Description	Proposed Timeline
Project Management and Administration	Conduct necessary project planning to ensure timely execution of all Project Tasks. Prepare and provide regular, bi-weekly Project Status reports (i. e., consultant costs and hours to date versus budget, progress on Project Tasks to date, etc.). Collect required documentation for the City's grant reporting purposes (e. g. meeting sign-in sheets, etc.). Meet with the Project Manager for direction, and – from time to time with the Project Team as requested by the Project Manager – to provide updates, confer on issues, plan for Project Steering Committee and Planning Workgroup Meetings, etc.	Ongoing, through Project completion
Collect and Review Existing Plans and Formulate Plan Outline	Collect and review existing LHMPs and other plans (e. g., respective jurisdictions' General Plan Safety Elements, applicable dam safety Emergency Action Plans, climate action plans, community wildfire protection plans, capital plans, etc.) in order to achieve alignment between the Plan and the various applicable plans. Formulate a Plan outline for the Project Team's review and approval.	March 2023

Task Name	Task Description	Proposed Timeline
Project Kickoff Meeting	Organize, prepare agenda, invitation, and content for, and facilitate an introductory meeting to the Project, explaining Project purpose, scope, overview, and timeline; Project Governance; and Consultant's contractual responsibilities. Share Plan outline; share a preliminary list of identified hazards; announce planned stakeholder engagement (e. g. forthcoming information requests and meetings, planned public outreach, etc.). Meeting content is subject to Project Manager's direction and review and may include other topics as reasonably necessary to meet Project Objectives.	April 2023
Identify Hazards, Collect Data	Identify hazards applicable to the Planning Area, based on existing plans and sources. Some sources for data collection include FEMA's and Cal OES' online resources, publications and mapping; USGS Haywired earthquake scenario; researching related studies and recent incidents; obtaining relevant GIS layers and mapping, conducting interviews with SMEs regarding past incidents and historical impact, etc. Collect data required to successfully execute Project Tasks; in particular, collect data needed to execute Level 2 and Level 3 Hazus modeling (e. g., building and infrastructure systems inventory, property information, soil and liquefaction mapping layers, etc.). Collect GIS hazard layers, where available.	April 2023

Task Name	Task Description	Proposed Timeline
Develop and Run Hazus Modeling	Develop and run Level 2 and Level 3 Hazus analyses, including: <ul style="list-style-type: none"> a) Level II analysis to evaluate earthquake impacts over the entire Planning Area and specifically for each of the Cities of Fremont, Newark, and Union City; and b) Level III analysis to evaluate earthquake impacts – over the entire Planning Area and specifically for each of the Cities of Fremont, Newark, and Union City – for approximately 60 specific City of Fremont, City of Newark, City of Union City, ACWD, USD, Fremont Unified School District, New Haven Unified School District, Newark Unified School District and Ohlone Community College District facilities. 	April 2023
Develop Preliminary Risk Assessments	Formulate preliminary risk assessments based on detailed identified hazard analysis and modelling (detailing location, severity, and concentration of identified potential hazard impacts, including to specific infrastructure systems, public buildings, or the community).	May 2023
Project Steering Committee Meeting 1	Organize; prepare agenda, invitation, and content for; and facilitate a Project Steering Committee Meeting with topics to include Project Status, reviewing and soliciting input on a finalized list of hazards and preliminary risk assessments of those hazards, solicit feedback on existing and potential community capabilities to mitigate those hazards, provide status updates and announce upcoming requests for engagement and plan content review, etc. Meeting content is subject to Project Manager's direction and review and may include other topics as reasonably necessary to meet Project Objectives.	June 2023
Update Risk Assessment	Update risk assessments based on Project Steering Committee members' and Participating Agencies' feedback.	June 2023

Task Name	Task Description	Proposed Timeline
Develop Outreach Strategy and Materials	Develop a public outreach strategy and multi-media approach to promote public comment on the Plan - to include material for agency website and social media postings and other print or electronic media. Develop an online, publicly accessible hazard mitigation survey to collect input to inform the final draft Plan (e. g., asking residents opinion on hazards, risks, and potential mitigation measures – reporting results according to the city and area of respondents).	June 2023
Steering Committee Meeting 2	Organize; prepare agenda, invitation, and content for; and facilitate a Project Steering Committee Meeting with topics to include Project Status, reviewing and soliciting input on updated risk assessments and mitigation goals and strategies to reduce risk, and review and validation of proposed public outreach strategy and materials. Meeting content is subject to Project Manager's direction and review and may include other topics as reasonably necessary to meet Project Objectives.	July 2023
Planning Workgroup Meetings	As necessary to prepare the Plan and execute the Project, hold meetings among select agency stakeholders on various topics to conduct, gather input for, or validate technical planning content.	July 2023
Develop Mitigation Goals & Strategies	Develop mitigation strategies and goals based on input from the Project Steering Committee and/or Planning Workgroup meetings culminating in documented mitigation goals and strategies to mitigate specific hazards.	July 2023
Develop Mitigation Action Plans	Prepare detailed mitigation action plans, consistent with the Mitigation Goals and Strategies, and based on input from the Project Steering Committee and/or Planning Workgroup meeting, to mitigate specific risks (e. g. both geographically specific and general, for specific public facilities, for specific classes of infrastructure and/or buildings, etc.).	August 2023

Task Name	Task Description	Proposed Timeline
Steering Committee Meeting 3	Organize; prepare agenda, invitation, and content for; and facilitate a Project Steering Committee Meeting with topics to include Project Status, reviewing and validating the draft plan, reviewing planned implementation of outreach strategy and materials, and preparing for Plan Adoption. Meeting content is subject to Project Manager's direction and review and may include other topics as reasonably necessary to meet Project Objectives.	September 2023
Prepare Draft Plan and Solicit Comments	Prepare a complete draft of the Plan, soliciting comments in succession from the Project Manager, Project Team, Project Steering Committee, and Participating Agencies. Coordinate with the City of Fremont, City of Newark, City of Union City, ACWD, and USD to post the draft Plan and Outreach Materials.	October 2023
Prepare Final Draft Plan	Review and adjudicate public comments on the Plan, summarizing issues for Project Manager review and direction. Finalize the Plan, based on public input and any final comments from the Project Manager, Project Team, Project Steering Committee, and Participating Agencies.	November 2023
Plan Adoption	Prepare for, attend, and as necessary provide subject matter expertise concerning the Plan at City of Fremont, City of Newark, and City of Union City Disaster Council and City Council meetings and ACWD and USD Board of Directors meetings.	December 2023

SERVICE AGREEMENT EXHIBIT D

INSURANCE REQUIREMENTS **Professional**

Consultant's performance of the services under this agreement shall not commence until Consultant shall have obtained all insurance required under this Exhibit and such insurance shall have been reviewed and approved by the Risk Manager. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Consultant shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for alleged injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Consultant, the Consultant's agents, representatives, employees and subcontractors. Required professional liability insurance shall be maintained at the level specified herein for the duration of this agreement and any extension thereof and for twelve additional months following the agreement termination or expiration.

INSURANCE COVERAGE AND LIMITS RESTRICTIONS

1. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Fremont before the City of Fremont's own insurance or self-insurance shall be called upon to protect it as a named insured.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
 - a. Blanket contractual liability
 - b. Broad form property coverage
 - c. Personal injury
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Professional Liability insurance

5. Such other insurance coverages and limits as may be required by the City of Fremont.

B. MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.
Bodily Injury by Disease - \$1,000,000 policy limit.
Bodily Injury by Disease - \$1,000,000 each employee.
4. Professional Liability insurance: \$2,000,000.
5. Such other insurance coverages and limits as may be required by the City of Fremont.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

1. Any deductibles or self-insured retentions must be declared to and approved by the City of Fremont. At the option of the City of Fremont, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Fremont, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City of Fremont.
3. The City of Fremont reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

D. ADDITIONAL INSURED REQUIREMENTS:

1. The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:
 - a. The City of Fremont, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects alleged: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Fremont, its officers, officials, employees, agents or volunteers.
 - b. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Fremont, its officers, officials, employees, agents or volunteers.
 - c. The Consultant's insurance shall apply separately to each insured against

whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

- d. Consultant shall furnish properly executed Certificates of Insurance from insurance companies acceptable to the City of Fremont and signed copies of the specified endorsements for each policy prior to commencement of work under this agreement. Such documentation shall clearly evidence all coverages required above including specific evidence of separate endorsements naming the City of Fremont and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after 30 days prior written notice by certified mail, return receipt requested, has been filed with the City Clerk.

Such insurance shall be maintained from the time work first commences until completion of the work under this agreement. Consultant shall replace such certificates for policies expiring prior to completion of work under this agreement.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. COMPLETED OPERATIONS

Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event the Consultant fails to obtain or maintain completed operations coverage as required by this agreement, the City of Fremont at its sole discretion may purchase the coverage required and the cost will be paid by the Consultant.

G. CROSS-LIABILITY

The Liability policy shall include a cross-liability or severability of interest endorsement.

H. FAILURE TO MAINTAIN INSURANCE COVERAGE

If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this agreement, the same shall be deemed a material breach of contract. The City of Fremont, at its sole option, may terminate this agreement and obtain damages from the Consultant resulting from said breach. Alternatively, the City of Fremont may purchase such required insurance coverage, and without further notice to Consultant, the City of Fremont may deduct from sums due to Consultant any premium costs advanced by the City of Fremont for such insurance.

I. PRIMARY AND NON-CONTRIBUTORY

For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Fremont, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Fremont, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the City of Fremont's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

J. SUBCONTRACTORS

Consultant shall require all subconsultants to maintain the same levels of insurance and provide the same indemnity that the Consultant is required to provide under this Agreement. A subconsultant is anyone who is under contract with the Consultant or any of its subconsultants to perform work contemplated by this Agreement. The Consultant shall require all subconsultants to provide evidence of valid insurance and the required endorsements prior to the commencement of any work.

K. SUBROGATION WAIVER

Consultant agrees to waive subrogation rights against City of Fremont regardless of the applicability of any insurance proceeds, and to require all Consultants, subcontractors or others involved in any way with the services to do likewise.

L. VERIFICATION OF COVERAGE

Consultant shall furnish the City of Fremont with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City of Fremont before the services commence.

SERVICE AGREEMENT EXHIBIT E

FEDERAL PROVISIONS

A. DEFINITIONS

1. **Government** means the United States of America and any executive department or agency thereof.
2. **FEMA** means the Federal Emergency Management Agency.
3. **Third-party Subcontract** means a subcontract at any tier entered into by Consultant or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

B. FEDERAL CHANGES

1. Consultant shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. Consultant's failure to so comply shall constitute a material breach of this contract.
2. The Consultant agrees to include the above clause in each third-party subcontract which may be financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. ACCESS TO RECORDS

1. The Consultant agrees to provide the City of Fremont ("City"), FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Consultant 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 Consultant agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Consultant agrees to maintain same until the City, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

4. The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 16 of the Agreement.

D. DEBARMENT AND SUSPENSION

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 consultant is required to verify that none of the consultant, 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. Consultant represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Consultant agrees that neither Consultant nor any of its third-party subs shall enter into any third-party subcontracts for any of the work under this Agreement with a third-party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.
3. The consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Consultant agrees to the provisions of Attachment E1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment E1, Consultant is the "prospective lower tier participant."
4. The Consultant agrees to include paragraphs A and B above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
5. This certification is a material representation of fact relied upon by City. If it is later determined that the consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the City, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
6. 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."

E. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

1. The City and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Consultant agrees to include the above clause in each third-party subcontract which may be financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

Consultant agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

1. Consultants and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
2. Consultants, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
3. Consultants and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
4. Consultants, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

G. ANTI-KICKBACK ACT COMPLIANCE (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))

Consultant agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

H. DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of City’s expenses incurred in connection with the services provided under this Agreement, Consultant agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

1. The Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
2. The general prevailing wage rates may be accessed at the Department of Labor Home Page at <https://sam.gov/search?index=dbra>. In the drop down menu for State, select, “California.” In the drop down menu for County, select “Alameda.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

I. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

1. **Compliance:** Consultant agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
2. **Overtime:** No consultant or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
3. **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Consultant and any subcontractor responsible therefore shall be liable to any affected

employee for his unpaid wages. In additions, such Consultant and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

- 4. Withholding for unpaid wages and liquidated damages:** The City 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 consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- 5. Subcontracts:** The consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

J. NOTICE OF REPORTING REQUIREMENTS

- 1.** Consultant acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- 2.** The Consultant agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

K. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- 1.** Consultant agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
 - a. The copyright in any work developed with the assistance of funds provided under this Agreement;
 - b. Any rights of copyright to which Consultant purchases

ownership with the assistance of funds provided under this Agreement.

2. The Consultant agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

L. PATENT RIGHTS (applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))

1. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Consultant agree to take actions necessary to provide immediate notice and a detailed report to FEMA.
2. Unless the Government later makes a contrary determination in writing, irrespective of Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Consultant agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.
3. The Consultant agrees to include paragraphs A and B above in each third-party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

M. ENERGY CONSERVATION REQUIREMENTS

1. The agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
2. The Consultant agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

N. CLEAN AIR AND WATER REQUIREMENTS (applicable to all contracts and subcontracts in excess \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)

1. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q)

and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

2. Consultant agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
3. The Consultant agrees to include paragraph A and B above in each third-party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

O. TERMINATION

See Section 15 of the Agreement.

P. CHANGES.

See Section 22 of the Agreement.

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

1. Consultant shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. Consultant agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
3. Consultant agrees to include paragraphs A and B above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

R. MBE / WBE REQUIREMENTS

The City intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONSULTANT fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
6. If subcontracts are to be let, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

s. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

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

for procurement of recovered materials identified in the EPA guidelines.

T. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the FEMA terms and conditions.

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

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

V. DHS SEAL, LOGO, AND FLAGS

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

Service Agreement Attachment E1

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

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

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

Instruction for Certification

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

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

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

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

Consultant Signature

Date

DRAFT

Service Agreement Attachment E2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Consultant Signature

Date

ATTACHMENT 3

TIMEKEEPING

Sample Project Worksheet

FORCE ACCOUNT LABOR SUMMARY RECORD - MULTI-JURISDICTIONAL LOCAL HAZARD MITIGATION PLAN UPDATE											
Applicant		GPS N	FEMA ID	PW #	CDAAC Disaster #	FEMA Disaster #					
City of Fremont		37.552689			N/A	DR-4558					
Location/Site		GPS W	CDAAC ID	Category	Period Covering						
"Tri-Cities:" Fremont, Newark & Union City, CA		-121.982177		N/A	6/1/2021	to	5/14/2022				
Description of Work Performed:											
Pre-Award Costs, consisting of: project scoping, project research, project planning & development; NOI preparation & review; grant subapplication preparation & review; meeting & correspondence with Cal OES officials; meetings & correspondence with Project Steering Committee members; preparation of & response to Cal OES' Requests for Information; and other planning, administrative and financial tasks directly related to the Tri-Cities Multi-jurisdictional Local Hazard Mitigation Plan project.											
Name	Hours Worked Each Week						Total Hours	Hourly Rate	Benefit Rate/Hr.	Total Hourly	Total Costs
Job Title	Week of	5/31	6/1	6/2	6/3	6/4					
Last, First Q.	Reg.		1.00	7.00	1.00	5.00	14.00	\$ 70.67	63.00%	\$ 115.19	\$ 1,612.69
Title	O.T.										
Last, First Q.	Reg.										
Title	O.T.										
Last, First Q.	Reg.										
Title	O.T.										
Last, First Q.	Reg.		1.00	3.00	1.00	1.00	6.00	\$ 52.77	62.29%	\$ 85.64	\$ 513.84
Title	O.T.										
Last, First Q.	Reg.			1.00		1.00	2.00	\$ 73.23	66.50%	\$ 121.93	\$ 243.86
Title	O.T.										
Last, First Q.	Reg.			1.00	1.50	1.00	3.50	\$ 68.18	67.00%	\$ 113.86	\$ 398.51
Title	O.T.										
	Reg.										
	O.T.										
This Page Force Account Labor Regular Time							25.50				\$ 2,768.90
This Page Force Account Labor Overtime											\$ -
Other Pages Force Account Labor Regular Time							109.50				\$ 12,162.33
Other Pages Force Account Labor Overtime											\$ -
Total Cost for Force Account Labor Regular Time							135.00				\$ 14,931.23
Total Cost for Force Account Labor Overtime											\$ -
I CERTIFY THAT THE ABOVE INFORMATION WAS TRANSCRIBED FROM PAYROLL RECORDS, VENDOR INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT											
Certified						Title			Date		

*Mr. Martinez is employed by Union City and also serves as Emergency Coordinator for the City of Newark, under a contractual arrangement between the Cities of Newark and Union City. **ACWD: Alameda County Water District, *** USD: Union Sanitary District

Page 1

EMPLOYEE	FRINGE BENEFIT %
Last, First Q.	63.00%
Last, First Q.	63.00%
Last, First Q.	63.00%
Last, First Q.	62.29%
Last, First Q.	66.50%
Last, First Q.	66.50%

Sample Project Activity Log

PROJECT ACTIVITY LOG

[illegible]

Meeting Sign-in Sheet

MEETING SIGN-IN SHEET

[illegible]

MEETING SIGN-IN SHEET

[illegible]