

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

### **PROFESSIONAL SERVICES CONTRACT**

This Contract for Professional Services (“Contract”), with an effective date of February 2, 2021, is hereby entered into between **the Baldwin County Commission (“Client”)**, a political subdivision formed under the laws of the State of Alabama, whose Administrative Office is at Baldwin County Administration Building, County Commission Office, 322 Courthouse Square, Bay Minette, Alabama 36507; and **Hagerty Consulting, Inc. (“Provider”)**, a corporation organized and existing under the laws of the State of Illinois and authorized to transact business in the State of Alabama, and whose corporate headquarters is at 1618 Orrington Avenue, Suite 201, Evanston, Illinois 60201. Client and Provider will from time to time be referred to together as “the Parties.”

#### **1. GENERAL TERMS**

**1.1. Headings:** Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.

**1.2. Time of Performance:** The timely performance by Provider of the services described in this Contract is of the essence and shall commence on the Effective Date.

**1.3. Dispute Resolution:** The parties are fully committed to working with each other throughout the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the **Client and Provider** each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the services.

**1.3.1. Right to Cure:** Client and Provider will attempt in good faith to resolve any claim, dispute, or controversy arising out of or relating to this Contract (hereafter collectively referred to as “Dispute”). In the event of a default under this Contract, the non-defaulting party shall provide written notice to the defaulting party giving the defaulting party no less than ten (10) business days to remedy the default. If the defaulting party does not cure the default within the time specified in the notice, the non-defaulting party may terminate this Contract and pursue all remedies available at law or in equity.

**1.3.2. Mediation:** The Parties may agree to, but are not required to, submit any unresolved Dispute to mediation. If the Parties mutually agree to attempt to resolve a Dispute through mediation, then the parties will cooperate with one another in selecting a mediator, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the Parties agree to attempt to resolve their Dispute through mediation, then either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

**1.3.3. Litigation:** If the parties do not mutually agree in writing to attempt to resolve their Dispute through mediation or if mediation was unsuccessful, then the Parties

acknowledge and agree that any action arising under or related to this Contract shall be governed by the laws of the State of Alabama with proper venue lying in the Circuit Court of Baldwin County, Alabama.

**1.4. Merger, Amendment, and Waiver:** This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior contracts, agreements, and understandings between Client and Provider concerning the scope of services described herein. The Scope of Services described in this Contract in Exhibit "A," attached hereto; the contract provisions for non-federal entities under Federal awards described in Exhibit "C and D," attached hereto; and all other terms of this Contract, shall not be amended or varied except by a written instrument signed by a duly authorized signatory of Client and Provider. Forbearance by Client from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle Provider to rely upon such forbearance in the event of another similar breach by Provider of the terms of this Contract.

**1.5. Compliance with EEOC and other U.S. Federal Laws and Regulations:** To the extent set forth in the respective statutes, **Provider** shall comply with the provisions of:

**1.5.1. Title VII of the Civil Rights Act of 1964;**

**1.5.2. Age Discrimination in Employment Act of 1967;**

**1.5.3. Title I of the Americans with Disabilities Act of 1990;**

**1.5.4. Equal Pay Act of 1963;**

**1.5.5. Fair Labor Standards Act of 1938; and**

**1.5.6. Immigration Reform and Control Act of 1986.**

**1.5.7. This Contract is intended to meet the applicable requirements contained in 2 C.F.R. Section 200.326 and 2 C.F.R. Part 200, Appendix II. If it is later determined that additional language is necessary to comply with those**



**requirements, the Parties will work together in good faith to supplement the Contract as necessary.**

- 1.7.** This Contract may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email in PDF format or facsimile shall be effective.
- 1.8.** By entering into this Contract, Provider affirmatively warrants that Provider is currently in compliance with such laws, including those listed in paragraph 1.5 above, and further warrants that during the term of this Contract, Provider shall remain in compliance therewith during the term of this Contract.
- 1.9.** Neither Party shall assign any right and/or obligation under this Contract without the other Party's prior written consent.
- 1.10.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of the Contract. If any provision of this Contract is found to be illegal, invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

## **2. SCOPE OF SERVICES:**

- 2.1.** Provider shall perform those tasks set forth in Exhibit "A," attached hereto and incorporated herein by reference. The anticipated scope of work may be expanded, through an amendment signed by both Parties, to include other disaster preparedness and disaster recovery services. Provider shall also perform all services while in compliance with all items included in attached Exhibit "C and D."



**2.2.** The Parties acknowledge that it is the intent of the Client to award this Contract for a twelve (12) calendar month period. However, the Client may, at its option and in agreement with Provider, renew the contract for up to two (2) additional years (2022 and 2023), in twelve (12) month increments. Client will, in writing, notify the Provider thirty (30) days prior to expiration of the 2021 contract with its intent to extend the Contract term. The prices for 2021 shall also apply to each extension period.

**2.3.** As an added control, Provider will not begin new tasks outside the Scope of Work on Exhibit "A" attached hereto without obtaining task order approval from the Client. These task order approvals may take the form of an email approval and will be completed at a level low enough to provide the Client control the overall Contract spend and timeline, but at a level high enough to allow for efficient and effective project management and execution by Provider.

**2.4** The Provider will be responsible for prompt delivery of services and support on an as needed basis, with Client reserving the right to select the services needed for a task, program, or function, based on the capabilities of staff and the level of augmentation and support needed. Services must be requisitioned through a task order approved by both Parties (for this purpose, and email task order will suffice).

**3. PAYMENT FOR SERVICES:**

**3.1.** This is a time and materials contract with an initial Not to Exceed ("NTE") cost of One Million Five Hundred Thousand Dollars (\$1,500,000) for the services. The NTE cost may be increased by the Client with a written amendment signed by both parties. Provider's hourly rates and costs are set forth in Exhibit "B," attached hereto and incorporated herein by reference.

3.2 On a monthly basis, Provider will submit invoices to Client detailing the time and material charges for the preceding month. Charges will be detailed by consultant with signed timesheets provided for support. Receipts or other charge detail will be provided to support travel and other direct costs.

3.3 Client will pay Provider's invoices on a basis of net 60 days after receipt of invoice.

3.4 Provider shall work with the Client to establish a system to track and submit direct and indirect administrative costs for allowable reimbursement from FEMA, HUD, or the State of Alabama. Client represents and understands that FEMA, HUD, and similar recovery programs are "reimbursement" programs and that the Client must pay Provider prior to seeking reimbursement for any allowable portion of these costs. For the avoidance of doubt, Client hereby agrees that its obligation to compensate Provider is not contingent upon the timing or the amount of reimbursement from FEMA, HUD, or the State of Alabama.

#### **4. WARRANTIES OF PROVIDER AND CLIENT:**

##### **4.1. Client warrants that:**

4.1.1. Client has the lawful authority to enter into and perform this Contract;

4.1.2. Client shall not offer employment to any employee of Provider for a period of two (2) years after the termination of this Contract, except if the termination of this Contract is for cause.

##### **4.2. Provider warrants that Provider has:**

4.2.1. All necessary licenses and consents required for Provider to enter into and fully perform the Scope of Services set forth on Exhibit "A;"

**4.2.2.** No conflict of interest with any other contract with a third party that might cause a claim to arise against Client by the entry into or performance of this Contract by Provider.

**4.2.3.** Authority, and any required registration, to transact business in the State of Alabama;

**4.2.4.** All service provider qualifications described or otherwise required by the Client's Request for Proposals for the services described herein.

**4.3. Provider warrants that Provider shall throughout the term of this Contract:**

**4.3.1.** Perform all tasks required under the Scope of Services with the same degree of skill and care as members of the same profession operating in the State of Alabama;

**4.3.2.** Ensure that any third party, employee, agent, or subcontractor of Provider shall comply with the terms of this Contract concerning employment discrimination, insurances, and the requirements of Exhibit C and D so far as concerns this Contract;

**4.3.3.** Provider will assume responsibility for delivery of services, regardless whether or not the Provider subcontracts any of these items and services. Provider will be the sole point of contact regarding contractual matters, including performance of services and the payment of any and all charges resulting from contract obligations. Provider will be responsible for all obligations set forth herein.

**4.4** Provider shall not offer employment to any employee of Client for a period of two (2) years after the termination, except for cause, of this Contract.

**5. OWNERSHIP OF PROJECT MATTER:**

Unless otherwise agreed between Client and Provider, and approved by Client's attorney:

**5.1** All plans, reports, surveys, and other professional work product of Provider concerning this Contract (but not internal working files, drafts, memoranda, and equipment) shall become the property of Client during and at the completion or termination of this Contract;



**5.2.** All materials supplied or loaned by Client to Provider during the term of this Contract shall remain the property of Client and shall be promptly returned to Client upon termination of this Contract;

**5.3.** All intellectual property provided to Client by Provider and originating from this Contract shall become and remain the property of Client, and Provider shall not, without the written consent and license from Client, use such intellectual property for another commercial purpose;

**5.4.** Client shall not become the owner, assignee, or licensee of any standard routine, programs, development tools, techniques, interfaces, texts, or other work existing prior to the date of this Contract that may be used by Provider in providing the services or intellectual property subject to this Contract, except as may be specifically agreed in writing between the parties. Any such agreement shall be an amendment to this Contract.

**6. EARLY TERMINATION OF CONTRACT:**

Client and Provider shall each have the right, upon thirty (30) days written notice to the other party, to terminate this Contract, and thereafter Client shall have no obligation to pay for services provided to Client except up to the effective date of termination of this Contract.

**7. INDEPENDENT CONTRACTOR STATUS:**

By entering into this Contract, Provider shall not become a servant, agent, or employee of Client, but shall remain at all times an independent contractor to Client. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between Client and Client, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

**8. NOTICES TO PARTIES:**

All notices to each party to this Contract, except routine notices of performance of the Scope of Services during the Contract term, shall be in writing, and sent as follows:

**To Client:**

NAME: Baldwin County Commission

TITLE: Joe Davis, III, Chairman

Cian Harrison, Clerk-Treasurer

Zach Hood, EMA Director

ADDRESS: 312 Courthouse Square, Suite 11, Bay Minette, AL 36507

TELEPHONE: 251-937-9561

EMAIL: [Joe.Davis@baldwincountyal.gov](mailto:Joe.Davis@baldwincountyal.gov)

[Cian.Harrison@baldwincountyal.gov](mailto:Cian.Harrison@baldwincountyal.gov)

[Zach.Hood@baldwincountyal.gov](mailto:Zach.Hood@baldwincountyal.gov)

With a copy, which shall not constitute notice, to:

J. Bradford Boyd Hicks  
Stone Crosby, P.C.  
8820 U.S. Highway 90  
Daphne, AL 36526  
[bhicks@stonecrosby.com](mailto:bhicks@stonecrosby.com)

**To Provider:**

NAME: Bradley R. Grining

TITLE: Chief Operating Officer

ADDRESS: 1618 Orrington Avenue, Suite 201, Evanston, IL 60201

TELEPHONE: 847-492-8454 x113

EMAIL: [brad.grining@hagertyconsulting.com](mailto:brad.grining@hagertyconsulting.com)

**8.1. Form of Notice:** All notices required or permitted under this Contract shall be effective:

**8.1.1.** On the third (3<sup>rd</sup>) business day after mailing by depositing the notice in the United States Mail, certified mail, return receipt requested, postage prepaid, addressed as set forth above; or on the day of receipt of such notice (whether by mail, courier, hand delivery, or otherwise), whichever is the earlier date of receipt; or

**8.1.2.** On the first day after receipt of a facsimile or electronic transmission (including email) of the written notice, with delivery confirmed, provided that such notice is also thereafter sent by first class mail as set forth above.

## **9. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:**

The Provider will indemnify and hold harmless the Client and its elected officials, agents and employees from and against all claims, damages, losses and expenses, arising directly or indirectly from the performance of services or work under this Contract or any extension or amendment, provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, injury to or destruction of tangible property, and is caused by any negligent or willful act or omission of the Provider or by any of Provider's third party, employee, agent, or subcontractor. The obligation of the Provider under this paragraph shall not extend to the liability of the Client or its agents or employees arising out of reports, surveys, change orders, designs, or specifications that are not attributable to the Provider.

## **10. INSURANCE:**

**10.1.** The Provider shall procure and maintain the following insurance during the term of the Contract, including any extension:

**10.1.1.** Worker's Compensation: For all of employees engaged in work on the project under this Agreement. In case any employee engaged in hazardous work on the project is not protected under the Worker's Compensation Statute, the **Provider**



shall provide Employer's Liability Insurance for the protection of such of his employees not otherwise protected under such provisions.

Coverage A – Worker's Compensation – Statutory

Coverage B – Employer's Liability - \$1,000,000.00

**10.1.2. Liability:** Comprehensive General Liability insurance including coverage for all operations, including, but not limited to Contractual, Products and Completed Operations, and Personal Injury. The minimum primary limits shall be no less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate Personal Injury Liability, and no less than \$500,000 Property Damage Liability, or \$2,000,000 Combined Single Limit Liability, or higher limits if required by any Excess Liability Insurer. The **Client** shall be named as additional insured pursuant to an additional insured endorsement providing comprehensive general liability coverage for completed operations in addition to on-going operations.

**10.1.3. Automobile Liability:** Automobile Liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000 Bodily Injury Liability, and no less than \$1,000,000 Property Damage Liability, or no less than \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. The Client shall be named as additional insured.

**10.1.4. Professional Liability:** Professional Liability insurance covering professional services rendered in accordance with this Agreement in an amount not less than \$2,000,000.

**10.2** The Provider shall furnish to the Client certificates of insurance evidencing said coverages. Provider shall notify Client thirty (30) days prior to any change in limits or scope of coverage, cancellation, or non-renewal.

**11.** The copyright provisions of 44 CFR Sec. 13.34 shall also extend to final documents produced for Baldwin County by the CONSULTANT, and the rights granted to FEMA by the provisions of 44 CFR Sec. 13.34 shall also extend to the County. The County reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, revise, publish, or otherwise use, and to authorize others to use for Baldwin County EMA purposes the copyright in the work developed under this contract for services which is, or may be, funded by the Baldwin County Commission and Emergency Management Performance Grant, or other federal (FEMA or otherwise) grant program.

(Signature Pages Follow)

IN WITNESS WHEREOF,

**Provider:** Hagerty Consulting, Inc.

By (signature): Bradley R. Grining

Date: January 14, 2021

Print Name: Bradley R. Grining

Title: Chief Operating Officer

Witness: Christine P. L...

(Signature Page Follows)



**Client: Baldwin County Commission**

By (signature): \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

In the aftermath of a major disaster, the Client seeks to protect its interests by securing the services of a qualified disaster recovery consultant as outlined in the following scope of work. The Client recognizes that if its facilities or operations are damaged and disrupted by a major disaster, its existing employees and systems need assistance with necessary disaster response and recovery work. In order to ensure a rapid recovery and post disaster redevelopment process, the Client may require the services of qualified, experienced professionals to aid in the preparation of documents relating to emergency management plans and state and federal grant application, award, and management processes.

The Client will collaborate with the Provider to develop specific scopes of work on a task order basis to support the needs of the Client. The Client will issue the provider a notice to proceed based upon the agreed scope of services. The scope of work provided by the Provider will include, but not be limited to:

1. Applicants Briefing and Scoping Meeting. Attend meetings with the State/Federal agencies including applicant briefings, kick-off meetings and project specific discussions.
2. Technical Assistance. Provide general financial management advice and assistance including but not limited to:
  - a. Develop and support the ongoing activity of a disaster recovery team to aid the Client in the FEMA Public Assistance process.
  - b. Provide advice as to the disaster recovery team as appropriate and participate in meetings.

- c. Provide advice as to the eligibility of facilities, work, and costs and develop justifications for presentation to the State and FEMA with regard to any issues which may arise.
3. Correspondence. Aid in the preparation of correspondence to the State agencies and FEMA on behalf of the Client as necessary.
4. Assist with program management planning and periodic reports depicting the status of grant management progress and participate in status meetings, as necessary.
5. Inspection/Damage Assessment. Inspect disaster related damage to eligible facilities, identify eligible emergency and permanent work (Categories A through G) and review records of emergency expenses incurred by the Client.
6. Document. Document, quantify, and present eligible damages, as identified by the Client, to Federal Inspectors/Project Officers.
7. Financial Tracking. Categorize, record, track and document costs on approved forms in support of the financial reimbursement process.
8. Financial Management. Assistance in requesting Immediate Needs Funding or Grants Based on Estimates; Development and tracking of plans for Cash flow management and disbursements by State/FEMA; Insurance evaluation, documentation adjusting and settlement services; Tracking project progress, expenditures, reimbursement requests and receipts.
9. Project Worksheet. Prepare Project Worksheets for Categories A through G for review by FEMA and the State ensuring that the scope of work is accurate and comprehensive, estimates are accurate, expenses are eligible and documented, and that projects are categorized as small or large in a manner that supports prompt and sufficient reimbursement to the Client; Attend all meetings with the Client, State and



FEMA (and/or other Federal agencies) to assist in negotiating individual Project Worksheets as needed.

10. Reporting. Compile and summarize in FEMA approved format Categories A through G costs for presentation to FEMA and the State and inclusion in project worksheets.
11. Provide assistance to Client departments having difficulty with their claims.
12. Support the Client in meeting all deadlines imposed by FEMA and/or the State for documentation, appeals, completion of work, etc.
13. Appeal. If the Client disagrees with any FEMA determinations, make all reasonable efforts to resolve any such dispute and/or strategize and write appeals; Provide fully qualified counsel to the Client in support of any legal action required as the result of an appeal.
14. Closeout. Aid in the preparation of documentation for, and represent the Client in, all project closeout activities. Participate in exit conferences with the Client, State, and FEMA.
15. Audit. Upon completion of all projects and drawn down reimbursement for all eligible costs, finalize preparations for State and FEMA final inspections and audits.
16. Hazard Mitigation Services (including FEMA (Stafford Act sections 403, 404, 406, and 428 sections and knowledge thereof): Assist in identifying, developing, and evaluating opportunities for hazard mitigation projects (Section 404 and 406). Develop hazard mitigation proposals, cost benefit analysis (BCA). Prepare other hazard mitigation services related to Hazard Mitigation Grant Program, Pre- Disaster Mitigation such as the Flood Mitigation Assistance (FMA) and Building Resilient Infrastructure in Communities (BRIC) programs, and other mitigation programs.
17. Other Grant Management Assistance: Provide other state and federal grant

management services as needed for declared disasters as approved by the Client. Assist the Client with the management and administration of other federal grant management programs not identified above.

18. Assistance with Individual Assistance information, publications, advertising, and coordination of community knowledge.
19. Assist the Client in Threat and Hazard Identification and Risk Assessment (THIRA) Updates to include analysis and implementation of changes resulting in a comprehensive THIRA revision for the Client.
20. Assist the Client in implementing lessons learned from Hurricane Sally, COVID-19, and other disaster knowledge and experience into a revision of the Emergency Operations Plan.

## EXHIBIT “B”

### HOURLY RATES AND COSTS

Services will be provided and invoiced by **Provider** based upon the time incurred at the labor categories and hourly rates defined below, plus the reimbursement of travel costs and other direct costs as more fully described below.

**Travel and Other Direct Costs** – Provider will invoice Client for travel costs in alignment with the US General Services (GSA) Federal Travel Regulations at cost, without markup. Other direct costs (ODC) may include reproduction, postage, or QuickBase licensing costs. ODCs will be invoiced to Client at cost, without markup.

**Labor Categories and Hourly Rates** – Labor categories and associated hourly rates for services performed under this contract are detailed below. These rates will be held constant for the first two-years of the contract term. At the end of the two-year period, and annually thereafter, the Provider’s hourly rates will increase by the cumulative rate of inflation over that period as measured by the Consumer Price Index. For all labor categories, additional years of experience may be substituted for educational requirements.

Positions	Hourly Rates
Project Executive	\$240
Project Manager	\$175
FEMA Public Assistance / Hazard Mitigation Manager	\$160
FEMA Public Assistance /Hazard Mitigation Specialist	\$140
Senior Grant Management Specialist	\$135

<b>Positions</b>	<b>Hourly Rates</b>
Grant Management Specialist	\$110
Insurance Specialist	\$185
Appeals Specialist	\$160
Administrative Assistant	\$75
Subject Matter Expert	\$250
Preparedness / Recovery Consultant III	\$180
Preparedness / Recovery Consultant II	\$150
Preparedness / Recovery Consultant I	\$115



**EXHIBIT “C”**  
**CONTRACT PROVISIONS FOR**  
**NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” If the contract meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3, then during the performance of this contract, the **Provider** agrees as follows:

- (1) The **Provider** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The **Provider** will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) The **Provider** will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The **Provider** will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The **Provider** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the **Provider's** noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The **Provider** will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay



wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act

- (1) The **Provider** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The **Provider** agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

(H) Federal Water Pollution Control Act

- (1) The **Provider** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The **Provider** agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The **Provider** agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The **Provider** must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the **Provider** did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer



further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

(K) See §200.322 Procurement of recovered materials.

(L) Access to Records. The following access to records requirements apply to this contract:

- (1) The contractor agrees to provide the State of Alabama, the Client, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

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

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

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

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

**EXHIBIT "D"**  
**BYRD ANTI-LOBBYING COMPLIANCE**  
**AND CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000) The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or Current as of 9-26-16 11 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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

Handwritten Signatures of Authorized Principal(s):

PROVIDER NAME: Hagerty Consulting, Inc.

AUTHORIZED SIGNATURE: Bradley R. Grining

PRINT NAME: Bradley R. Grining

TITLE: Chief Operating Officer

DATE: January 14, 2021