

From: john.zhuang@byd.com
To: [Bollinger, Jennifer@CalOES](mailto:Bollinger_Jennifer@CalOES); [Pal, Alex@CalOES](mailto:Pal_Alex@CalOES); junei.chen@byd.com
Subject: MASTER SUPPLY AGREEMENT Health Products California
Date: Monday, April 6, 2020 10:00:19 PM
Attachments: [image001.png](#)
[MASTER SUPPLY AGREEMENT Health Products California \(v7 BYD Clean\).docx](#)
[MASTER SUPPLY AGREEMENT Health Products California \(v7 BYD Redline\).docx](#)
[MASTER SUPPLY AGREEMENT Health Products California \(v7 BYD Redline\).pdf](#)

Jennifer and Alex:

Please see attached:

- MASTER SUPPLY AGREEMENT Health Products California (v7 BYD Redline).pdf
- MASTER SUPPLY AGREEMENT Health Products California (v7 BYD Clean).docx
- MASTER SUPPLY AGREEMENT Health Products California (v7 BYD Redline).docx

I'll call you now to walk you through our edits. After we finalize the body of the contract, I will turn my attention to finalizing Exhibit A and Exhibit B.

Best,
John



John Zhuang, Esq. / Counsel

BYD America
1800 S Figueroa St, Los Angeles, CA
(213) 748-3980 [REDACTED]

This e-mail contains information from BYD. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at john.zhuang@byd.com.



EQUIPMENT MASTER SUPPLY PURCHASE ORDER AGREEMENT

This Equipment Master Supply Purchase Order Agreement (hereinafter "Agreement" or "MSA") is entered into on the ____ day of _____, 2020, by and between Global Healthcare Product Solutions, LLC, a Delaware limited liability company, with the registered address of 919 North Market Street, Suite 950, Wilmington, DE 19801 ("Seller") and the California Governor's Office of Emergency Services with the registered address of 3650 Schriever Avenue, Mather, CA 95655 ("Buyer") (collectively "parties").

RECITAL

WHEREAS, in 2020, the State of California (the Buyer), the United States, and multiple key continents around the world are combating the rapid spread of the deadly pandemic known as the Novel Coronavirus or COVID-19 (the "Pandemic");

WHEREAS, despite the current state of the Pandemic around the world as of April 5, 2020, the parties agree they are capable of performing all obligations under this Agreement;

WHEREAS, the Seller makes and sells certain equipment used in the healthcare industry, including surgical masks, N95 masks, KN95 masks, hand sanitizers, infrared thermometers, and other products;

WHEREAS, the Seller's equipment is vital to reducing and mitigating the spread of the Pandemic in affected regions such as the Buyer's region;

WHEREAS, the Buyer desires to procure large quantities of certain subsets of Seller's healthcare industry equipment, including, without limitations, surgical masks and N95 masks, in order to use the products to combat the Pandemic in California;

WHEREAS, Buyer requires Seller's N95 mask equipment to fulfill National Institute for Occupation Safety and Health ("NIOSH") certification requirement pursuant to Section 2 "N95 Contingency", and Buyer understands that Seller's ability to achieve the requirements in said section will be contingent upon support from the State of California, and the State of California further agrees to provide such support;

WHEREAS, the Buyer enters into this Agreement pursuant to Governor Newsom's March 4, 2020, State of Emergency Proclamation for COVID-19, and

does so as an emergency protective measure to protect the public health and safety;

AGREEMENT

NOW, THEREFORE in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **EQUIPMENT AND PRICING.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Seller equipment ("Equipment") as set forth in Exhibit A "PRODUCT SPECIFICATIONS AND PAYMENT TERMS."
2. **N95 CONTINGENCY.** The purchase of N95 masks under this Agreement is contingent upon Seller obtaining the National Institute for Occupation Safety and Health ("NIOSH") certification by April 30, 2020 for the N95 masks purchased under this Agreement, unless both parties agree in writing to extend this due date.
3. **PAYMENT METHOD.** (a) When Buyer is making payment to Seller, Buyer shall make payment by bank wire transfer to the bank account below:

Receiving Bank: [REDACTED]
Bank Address: [REDACTED]
Beneficiary: Global Healthcare Product Solutions, LLC
Beneficiary Address: 1800 S. Figueroa Street, Los Angeles, CA 90015
Bank Account Number: [REDACTED]
Bank Routing Number (Domestic Wires): [REDACTED]

(b) [OPEN] In the event that Seller is required under this Agreement to transfer money to Buyer, Seller shall make payment by bank wire transfer to the bank account below:

Receiving Bank:
Bank Address:
Beneficiary:
Beneficiary Address:
Bank Account Number:
Bank Routing Number (Domestic Wires):

4. **DELIVERY.** (a) Schedule & Location. Delivery shall be made in accordance to the schedule stated in Exhibit B ("Delivery Schedule"). The delivery location for the Equipment shall be [REDACTED]

██████████ "Delivery Location"). The Equipment shall be shipped via air carrier by Seller. The delivery term shall be INCOTERM 2020 DDP to the Delivery Location, at which time risk of loss and title shall pass to Buyer.

(b) Time of Delivery. Seller will use its best business efforts to achieve on-time delivery consistent with the Delivery Schedule.

5. ACCEPTANCE. All Equipment ordered by Buyer may be subject to delivery acceptance inspection and testing by the Buyer or its authorized representatives at the Delivery Location. Buyer will give written notice of rejection of Equipment delivered within three (3) business days after receipt of Equipment at the Delivery Location. Such notice of rejection will state the respects in which the Equipment does not substantially conform to specifications stated in Exhibit A. If the Buyer does not provide such notice of rejection within three (3) business days after the Equipment arrives in the United States, such Equipment will be deemed to have been accepted. Acceptance by the Buyer will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Subject to this Agreement, Buyer's acceptance shall not be construed to waive any warranty rights (if any) that the Buyer may have at law or under this Agreement with respect to any nonconformity.

6. INVOICE & PAYMENT. (a) Invoicing Procedure. Unless otherwise specified, all invoices arising from this agreement will be sent in paper format to:

The Governor's Office of Emergency Services
Attn: Accounting Unit
3650 Schriever Avenue
Mather, CA 95655

and in digital format to:

BYDinvoice@caloes.ca.gov.

Paper invoices will be submitted in triplicate and will include the Agreement number.

(b) Timing & Payment of Invoices. (1) Prepayment. Buyer will make a prepayment three (3) business days from the date Buyer approves this Agreement. At Buyer's sole and operational discretion, Buyer may remit prepayment to Seller before three (3) business days. (2) During the term of this Agreement, Seller shall invoice Buyer in accordance to this Section 6, twice a week on every Monday and Thursday, and payment shall be made on the business day following such invoicing date. Invoice payments made on Tuesday of each week will be payment for Purchase Order deliveries made during each of the previous four days, and invoice payments made on Friday of

each week will be payment for Purchase Order deliveries made during each of the previous three days. Buyer shall pay Seller, in the manner prescribed in Section 3 "Payment Method". At the end of this Agreement's term, if there are any unpaid Purchase Order deliveries, such invoices shall be paid in full within five (5) business days.

(c) Payment of Invoices. Additionally, both parties understand and agree that Seller's continued performance under this Agreement is contingent upon the timely payment of its invoices when due.

7. TERM & TERMINATION. (a) Term. This Agreement shall commence upon the full execution of this Agreement and shall continue through the end of June 2020 (this first term and the related delivery and payment obligations shall be known herein as "Batch A").

(b) Buyer's Option to Extend Term. Buyer shall have the option to exercise a right to extend this Agreement for additional one-month terms, at the same price as set forth in Exhibit A, for a maximum of two (2) additional months. Buyer agrees to provide thirty (30) calendar days of advance written notice to Seller of Buyer's intent to exercise this option (these two optional subsequent terms and the related delivery and payment obligations shall be known herein as "Batch B" and "Batch C", respectively).

(c) Seller's Right to Terminate for Convenience. If there are no pending or unfulfilled Purchase Orders outstanding, or Buyer has not exercised the right to extend this Agreement, Seller may at its sole discretion, and without any further liability or penalty, terminate this Agreement by sending written notice of termination to Buyer and such notice shall be effective immediately ("Seller's Right to Terminate for Convenience").

(d) Buyer's Right to Terminate for Convenience. The Buyer may terminate this Agreement (in part or in whole) for any reason by delivering a written notice of termination for Buyer's convenience to Seller seven (7) days in advance of the effective date of Buyer's termination for convenience ("Buyer's Termination for Convenience" or "Effective Date of the Buyer's Termination for Convenience").

On the Effective Date of the Buyer's Termination for Convenience, and except as directed by the Buyer, the Seller will immediately proceed with the following obligations:

- (i) Stop work as specified in the Buyer's Termination for Convenience;
- (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement;

- (iii) Use its best business efforts to terminate all subcontracts to the extent they relate to the work terminated;
- (iv) Use its best business efforts to settle all outstanding liabilities and termination settlement proposals arising from termination of subcontracts;
- (v) Seller to remit and refund to Buyer the entire prepayment less payment for accepted Equipment.

On the Effective Date of the Buyer's Termination for Convenience, Buyer shall have the following obligations:

- (i) Within three (3) business days of delivery, inform Seller in writing the portion of the Equipment order under this Agreement the Buyer intends to terminate; and,
- (ii) Buyer will pay the contract price for any completed Equipment that's been delivered and accepted in accordance with this Agreement.

For the avoidance of doubt, in the event that Buyer exercises Buyer's Termination for Convenience, Buyer shall continue to procure and pay for the contracted for Equipment in accordance with this Agreement until the Effective Date of the Buyer's Termination for Convenience.

The rights and remedies of either party under this Section 7 are in addition to any other rights and remedies provided by law or under this Agreement.

8. FEES AND TAXES. Unless otherwise stated herein or in an applicable Purchase Order, Seller shall pay for fees and taxes in accordance with the delivery term described herein. Unless otherwise required by United States law, Buyer is exempt from Federal excise taxes. Buyer will only pay State of California or local sales or use taxes on Equipment supplied under this Agreement, as applicable.

9. FORCE MAJEURE. Neither Seller or Buyer will be responsible to perform under this Agreement as a result of acts beyond its reasonable control including, without limitation, acts of God, fire, flood, earthquakes or other man made or natural disasters, outbreak of disease, acts of war or terrorism or crime, shortage of power supply, transportation or other utility service, governmental action, labor disputes, or civil unrest (each a "Force Majeure Event"). The affected party shall, as soon as reasonably practicable after the occurrence of any such Force

Majeure Event, (a) provide written notice to the other party of the nature and extent of any such Force Majeure Event; and (b) use reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable. If performance is not reasonably practicable within seven (7) days, then the other party may then terminate this Agreement by written notice to the affected Party.

10. LIMITS ON LIABILITY. To the maximum extent permitted by law, the parties agree as follows: (1) Liability. Seller's maximum liability (however caused) arising from this Agreement shall in no event exceed all amounts actually paid by Buyer to Seller for the particular Purchase Order in dispute under this Agreement. (2) Consequential Damages. In no event shall Seller be liable for any consequential, special, incidental, indirect, or punitive damages, including without limitation lost profits, whether the claim is based on contract, tort, strict liability, or any other theory of law or equity, even if advised of the possibility of such damages.

11. LIMITS ON WARRANTY. Seller warrants that Equipment furnished hereunder will conform to the Equipment specifications stated in Exhibit A upon their arrival at the Delivery Location ("Specifications"). Outside of the foregoing Specifications, Seller (a) makes no warranties or representations, either expressed or implied, as to the Equipment (or any of the Equipment's parts or accessories) provided for under this Agreement and (b) makes no warranty of merchantability or fitness of the Equipment provided for under this Agreement for any particular purpose.

12. AFFILIATE GUARANTEE. Subject to the requirements in this Agreement, in the event that Seller breaches a Guaranteed Material Obligation (defined below) under this Agreement, and such breach is unexcused and not remedied within a reasonable time, BYD Motors LLC, a subsidiary of BYD Co., Ltd., will guarantee Seller's performance under this Agreement (the "Guarantor").

(a) For the purposes of this Section, "Guaranteed Material Obligation" shall exclusively mean the following: (i) Seller fails to obtain NIOSH certification for N95 masks by April 30, 2020; or, (ii) Seller fails to deliver any Material Quantity of the contracted for N95 masks by the end of the applicable term. For the purposes of this Section 12 "Affiliate Guarantee", Material Quantity shall mean 450 or more units of Equipment per shipment.

(b) Solely to the extent that the Seller is unable to fulfill the Guaranteed Material Obligations in accordance to this Section, Guarantor will step in to the assume the obligations of Seller under this Agreement and, as applicable, fulfill the Guaranteed Material Obligations or take responsibility for Seller's liabilities arising the same, including, as applicable, any Seller liability to refund some or all of the Buyer's prepayment amount under this Agreement.

13. ENTIRE AGREEMENT; WAIVER. This Agreement constitutes the entire agreement of the parties hereto. All prior agreements, whether oral or in writing, are superseded. No waiver or modification of this Agreement will be effective unless in writing and signed by both parties.

14. WAIVER OF RIGHTS. Any action or inaction by either the Seller or Buyer or failure to enforce any right or provision of the Agreement will not be construed as a waiver by either Seller or Buyer of its rights hereunder and will not prevent either Seller or Buyer from enforcing such provision or right on any future occasion. The rights and remedies are cumulative and are in addition to any other rights or remedies that are available at law or in equity.

15. BINDING ON SUCCESSORS AND PERMITTED ASSIGNS. This Agreement will not be assignable by either the Seller or Buyer in whole or in part without written consent of the parties. This Agreement shall be binding upon and inure to the benefit of any successors and permitted assigns of the parties hereto.

16. NOTICES. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and: 1) deposited in the United States Mail, certified and postage prepaid or sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver's signature required; and, (2) with a carbon copy sent via electronic mail, addressed as follows:

Seller: Global Healthcare Product Solutions, LLC
919 North Market Street, Suite 950
Wilmington, DE 19801
Attention: Legal Department
e-mail: contact@ghps.us

with a copy to the Guarantor:

BYD Motors, LLC
1800 S Figueroa St.
Los Angeles, CA 90015
Attention: Legal Department
e-mail: notices@byd.com

Buyer: California Governor's Office of Emergency Services
Attention: Legal Department
3650 Schriever Avenue
Mather, CA 95655
e-mail: BYDinvoice@caloes.ca.gov

The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

17. GOVERNING LAW; DISPUTE RESOLUTION. This Agreement shall be interpreted and construed solely in accordance with the laws of the State of California without regard to its choice of law principles. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall exclusively be settled by arbitration administered by the American Arbitration Association or JAMS in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Sacramento, California. The number of arbitrator(s) shall be one (1). Seller shall pay for the dispute resolution organization's standard and customary initiation fee required to initiate the arbitration with that organization, not to exceed \$6000, even in the circumstance where the Buyer is initiating arbitration. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be entitled to issue injunctive and other equitable relief. A party may apply to any court with jurisdiction for interim or conservatory relief, including without limitation a proceeding to compel arbitration. The parties agree to arbitrate all disputes arising from this Agreement on an individual basis (and in strict accordance to this paragraph) and each party waives the right to participate in a class action lawsuit against the other party. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

18. HEADINGS. Headings at the beginning of each section are solely for the convenience of the parties and shall not be considered when interpreting this Agreement.

19. SEVERABILITY. If any of the provisions of this Agreement are prohibited by or held invalid under applicable laws or regulations of any jurisdiction in which this Agreement is sought to be enforced, then that provision shall be considered inapplicable and omitted but shall not invalidate the remaining provisions.

20. SURVIVAL. All provisions regarding Section 10 (Limits on Liability), Section 11 (Limits on Warranty), Section 13, (Entire Agreement; Waiver), Section 15 (Binding on Successors and Permitted Assigns), Section 13 (Notice), Section 19 (Severability), Provision 17 (Governing Law; Dispute Resolution), and, this Section 20 (Survival) shall survive any termination of this Agreement.

21. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. INDEPENDENT CONTRACTOR: Seller and the agents and employees of Seller, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Buyer.

23. COMPLIANCE WITH STATUTES AND REGULATIONS: Seller warrants and certifies that in the performance of this Agreement, it will comply in all material respects, with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the Buyer against any third-party claims, loss, cost, damage or liability (together "Claims") occurring due to Seller's violation of this Section 21 "Compliance with Statutes and Regulations".

24. SELLER'S POWER AND AUTHORITY: The Seller warrants that it has full power and authority to enter into the Agreement and will hold the Buyer harmless from and against any third-party claims loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Section 22 "Seller's Power and Authority" or infringement of any patent, copyright, and/or trade secret.

25. AFFILIATE GUARANTOR'S POWER AND AUTHORITY: The Guarantor warrants that it has full power and authority to guarantee this Agreement.

26. SUBSTITUTIONS: Substitution of Equipment may not be tendered without advance written consent of the Buyer. Seller shall not use any specification in lieu of those contained in the Agreement without written consent of the Buyer.

27. NEWLY MANUFACTURED EQUIPMENT: All Equipment furnished under this Agreement will be newly manufactured Equipment; used or reconditioned Equipment is prohibited.

28. COVENANT AGAINST GRATUITIES: The Seller warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the Buyer with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this provision, the Buyer shall have the right to terminate the Agreement, either in whole or in part.

29. SWEATFREE CODE OF CONDUCT: (a) Sweatfree Code of Conduct. Seller declares under penalty of perjury that no apparel, garments or corresponding accessories, Equipment, materials, or supplies furnished to the Buyer pursuant to the Agreement have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under

penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Seller further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. (b) Records. Seller agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the Buyer, the Department of Industrial Relations, or the Department of Justice to determine Seller's compliance with the requirements under Section 26(a) "Sweatfree Code of Conduct".

30. Manufacturing Audits. The Buyer reserves the right to utilize a third party representative to audit Seller's manufacturing facility and/or conduct source inspection of Equipment at the end of the production line.

31. Reporting. Seller will keep complete, timely and accurate records, including, but not limited to incoming material quality, in-process yield, outgoing quality, regulatory compliance, production schedules, material shortages and shipment performance. Seller will provide the Buyer with on-line access to such records and will provide written reports to the Seller as requested.

32. RIGHTS AND REMEDIES.

(a) Should Seller fail to obtain the certification required in Section 2 "N95 Contingency", Seller shall, no later than May 8, 2020, refund to Buyer the Buyer's entire prepayment to Seller for the N95 masks.

(b) In the event Buyer rejects Equipment pursuant to Section 5 "Acceptance", in whole or in part, due to nonconformity, Buyer may choose, at its sole discretion, one of the following: (i) Seller will, without expense to Buyer, immediately replace all such rejected Equipment with other Equipment conforming to the Agreement, at Seller's sole expense; or (ii) Seller will, within five (5) business days of Buyer's rejection of Equipment, refund all applicable portions of the monies paid to Seller for such nonconforming Equipment, including pro-rated prepayment, for that rejected Equipment.

(c) Subject to Section 7(d) "Term & Termination", in the event Buyer exercises Buyer's Termination for Convenience, following the Effective Date of the Buyer's Termination for Convenience, Seller shall, within three (3) business days thereafter, remit, through wire transfer to Buyer, an entire refund of all monies Buyer paid to Seller, including any

prepayment or advancement of funds, under this Agreement less payment for delivered and accepted Equipment.

- (d) Subject to Section 9 "Force Majeure", if Either Party terminates this Agreement as a result of a Force Majeure Event, Seller shall, within three (3) business days, remit, through wire transfer to Buyer, a refund of all monies Buyer paid to Seller, including any prepayment or advancement of funds, under this Agreement, less payment for delivered and accepted Equipment.

33. NONDISCRIMINATION

a) During the performance of this Agreement, Seller and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Seller and Seller's subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Seller and its subcontractors shall comply with the provision of the Fair Employment and Housing Act (Government Code, section 12990 et seq.) and the applicable regulations promulgated thereunder (Cal. Code of Regulations, Title 2, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5, Division 4, of Title 2 of the California Code of Regulations are incorporated into the Agreement by reference and made a part hereof, as if set forth in full. Seller and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) The Seller shall include nondiscrimination and compliance provisions of this Section 30 "Nondiscrimination" in all subcontracts to perform work under the Agreement.

34. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the Seller agrees as follows:

- a. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual

orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- b. The Seller 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.
- c. The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- d. The Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Seller's legal duty to furnish information.
- e. The Seller 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 Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- f. The Seller 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.
- g. The Seller 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.

- h. In the event of the Seller's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- i. The Seller will include the portion of the sentence immediately preceding this Section 31 (a) and the provisions of Section 31 (a) through Section 31 (h) 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 Seller 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 the Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

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

The Seller agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Sellers and subcontractor with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such

compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Seller further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon.

This provision solely applies to Seller or Seller subcontractors or Seller Vendors under the jurisdiction of the laws and regulations of the State of California or the United States Government.

35. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act.

- a. **Overtime requirements.** No Seller or subcontractor contracting for any part of 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.
- b. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in Section 32(a), the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Section 32(a), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section 32(a).
- c. **Withholding for unpaid wages and liquidated damages.** The Federal Emergency Management Agency 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 Seller 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 Seller or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section 32(b).

- d. **Subcontracts.** The Seller or subcontractor shall insert in any subcontracts the clauses set forth in Section 32(a) through Section 32(d) 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 Section 32(a) through Section 32(d).

36. CLEAN AIR ACT

- a. The Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.
- b. The Seller agrees to report each violation to the California Air Resources Board and understands and agrees that the California Air Resources Board will, in turn, report each violation as required to assure notification to the Department of Resources Recycling and Recovery, the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- c. The Seller agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

37. THE FEDERAL WATER POLLUTION CONTROL ACT

- a. The Seller 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. Sections 1251 et seq.
- b. The Seller agrees to report each violation to the State Water Resources Control Board and understands and agrees that the State Water Resources Control Board will, in turn, report each violation as required to

assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

- c. The Seller agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

38. DEBARMENT AND SUSPENSION CLAUSE

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Seller is required to verify that none of the Seller, 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).
- B. The Seller 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.
- C. This certification is a material representation of fact relied upon by the State of California. If it is later determined that the Seller 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 Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. 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.

39. BYRD ANTI-LOBBYING CLAUSE

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Sellers who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection

with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

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

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

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

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

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

Signature of Seller's Authorized Official

Name and Title of Seller's Authorized Official

Date: _____

40. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Agreement the Seller shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Seller also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

41. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- A. The Seller agrees to provide the State of California, the FEMA Administrator, the Controller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Seller which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

- B. The Seller agrees to permit any of the foregoing parties to reproduce by any means whatsoever of to copy excerpts and transcriptions as reasonably needed.
- C. The Seller agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.
- D. In compliance with the Disaster Recovery Act of 2018, the State of California and the Seller acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

42. DHS SEAL, LOGO, AND FLAGS

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

43. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement only. The Seller will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

44. NO OBLIGATION BY FEDERAL GOVERNMENT

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

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

The Seller acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Seller's action pertaining to this Agreement.

46. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Seller swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a Federal court has been issued against the Seller within the immediately preceding two-year period because of the Seller's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code section 10296.

47. APPLICABILITY

For the avoidance of doubt Sections 33-46 of this Agreement shall solely applies to Seller or Seller subcontractors or Seller Vendors under the jurisdiction of the laws and regulations of, as applicable, the State of California or the Federal Government of the United States of America.

(Signature Page Follows)

BY SIGNING BELOW, BOTH PARTIES HERETO ACCEPTS THE TERMS AND
CONDITIONS OF THIS AGREEMENT.

BUYER:

By: _____
(Signature)

Name:

Title:

Date:

Address:

E-mail:

Phone:

SELLER:

By: _____
(Signature)

Name:

Title:

Date:

Address:

E-mail:

Phone:

By signing below, the Guarantor hereunder agrees to bound solely to the terms and conditions in this Section 11 "Affiliate Guaranty" and no other provision.

GUARANTOR:

By: _____
(Signature)

Name:

Title:

Date:

Address:

E-mail:

Phone: