

REQUEST FOR PROPOSAL

**PRE-AWARD CONSULTING ENGINEERING SERVICES
FOR THE RISK REDUCTION SPILLWAY AND DAM SAFETY
MODIFICATIONS AT LOWER BEAVER BROOK PROJECT**

NOFO # DHS-17-MT-047-00-99

LOOKOUT MOUNTAIN WATER DISTRICT

**SUBMITTAL DUE DATE
SEPTEMBER 25, 2018
10:00 A.M.**

**1202 BERGEN PARKWAY, SUITE 200
EVERGREEN, CO 80439**

REQUEST FOR PROPOSAL SUMMARY AND BACKGROUND

Lookout Mountain Water District (LMWD) is seeking firms who wish to be considered for Consulting Engineering Services for Compliance with the National Environmental Policy Act (NEPA) including the completion of an Environmental Analysis (EA) in connection with Federal Emergency Management Agency (FEMA) Region 8 review and assistance with the EA for the Project: RISK REDUCTION SPILLWAY AND DAM SAFETY MODIFICATIONS AT LOWER BEAVER BROOK. The Project was identified for further review for FEMA's Pre Disaster Mitigation (PDM) program for fiscal year 2017.

Currently, FEMA has completed its review of the application and determined the project is feasible, eligible for funding, and in keeping with this year's program priorities. If the award is granted, design and construction shall be in compliance with the State of Colorado, Department of Natural Resources, Division of Water Resources, Office of the State Engineer, Dam Safety Branch (SEO) "Rules and Regulations for Dam Safety and Dam Construction." Funding for the Project is expected to occur from a combination of FEMA Public Assistance (PA) and related public funds, and funds from the project owners. An engineering firm will be selected to complete an evaluation and preliminary design of the project. A second and immediately following phase of the project will be to prepare a final design, and construction documents. A third phase will be to provide engineering services during the construction.

A sample Agreement ("Contract") with a FEMA specific addendum is attached. The successful Respondent shall execute the attached addendum as part of any contract with LMWD and comply with all FEMA requirements set forth in that addendum.

The selected firm will comply with all state and local licensing requirements, including but not limited to, filing the State of Colorado Statement of Foreign Entity Authority paperwork, if contractor is not a Colorado company.

Information about the Lookout Mountain Water District (LMWD) can be found at:
<http://www.lookoutmountainwaterdistrict.org/>

SECTION 1: INTRODUCTION AND SCOPE OF SERVICES

1.1 INTRODUCTION

LMWD needs Consulting Engineering Services from a firm capable of providing professional services and technical assistance on an as-needed basis to support the NEPA compliance process, primarily during the pre-award phase of the project. Additional related services may be required either pre-award or post-award. LMWD intends to issue an agreement for consulting services for a three-year period in support of the project as it progresses into the next phases described above.

1.2 REQUESTS FOR INFORMATION

This RFP contains the instructions governing the proposals to be submitted and the material to be included therein, mandatory requirements which must be met to be eligible for consideration, and other requirements to be met by each proposal.

Any requests for clarification or additional information regarding submission of this RFP shall be submitted in writing via email (cshea@blacklockintegrated.services). Written requests for interpretation, clarification, and/or additional information must be received no later than September 14, 2018.

1.3 SUBMISSION OF PROPOSAL

Respondents are requested to submit:

- Four (4) copies of their proposal including signed cover letter
- One (1) electronic copy of the entire proposal provided as a .pdf on a USB flash drive
- Two (2) copies of their price proposal in a separate envelope marked "Price Proposal - Confidential"

The proposal must be received no later than **10:00 a.m.** local time, **September 25, 2018** at the District's office located at **1202 BERGEN PARKWAY, SUITE 200, EVERGREEN, CO 80439.**

- FOR PROPOSAL FORMAT SEE SECTION 3.2 below
- FOR PROPOSAL CONTENT SEE SECTION 3.3 below

Responses must be in the format noted. LMWD reserves the right to disqualify any response submitted incorrectly. Response packets shall be addressed as follows:

Title: PRE-AWARD CONSULTING ENGINEERING SERVICES AT
LOWER BEAVER BROOK
Lookout Mountain Water District Board of Directors
c/o Christina Shea, Secretary
1202 Bergen Parkway, Suite 200
Evergreen, CO 80439

1.3.1 Submittal Instruction Details

- Proposal (including both consulting and price proposal envelopes) may be either mailed or hand-delivered. If the proposal is sent by mail, please allow extra time for delivery before the deadline. Proposals received after the deadline will be discarded or returned to the Respondent unopened.
- The cover letter must contain the signature of a duly authorized officer or agent of the Respondent's company empowered with the right to contractually bind the Respondent.
- Each proposal must be sealed and addressed as stated above to ensure confidentiality of the information prior to the submission date and time. LMWD will not be responsible for premature opening of proposals not properly labeled. The name of the proposing firm should be on the outside of the envelope. Four (4) copies of the proposal are required to be submitted to LMWD along with one (1) electronic copy of the proposal provided as a .pdf on USB flash drive.
- Each price proposal should be sealed in a separate envelope and marked "Price Proposal – Confidential" to ensure confidentiality of the information prior to the submission date and time. The name of the proposing firm should also be on the outside of the envelope. Only one (1) copy of the price proposal is required to be submitted.
- Proposals become the property of Lookout Mountain Water District upon receipt by LMWD. The content of proposals will be kept confidential until an award is made, after which the content will no longer be kept confidential, except as provided herein.
- Proposals may be withdrawn or modified in writing prior to the proposal submission deadline. Proposals that are modified shall be sealed and resubmitted according to the above instructions prior to the proposal submission deadline.

1.4 SCOPE OF SERVICES

Consulting for Environmental and Permitting Procedures while coordinating with LMWD:

Prepare and submit permit applications and supporting documentation needed for compliance with the National Environmental Policy Act (NEPA) and for development of the Environmental Analysis (EA) for the project, as necessary to complete the project; assist with obtaining all agency approvals in a timely manner. This will be accomplished with the direct participation of the LMWD staff, contractors and representatives. LMWD reserves the right to make the final decision on which permits to apply for and what approach to take in the permitting process. Documentation developed prior to and related to the project will be provided by the LMWD to the successful Respondent in support of these activities.

Assist and support ongoing pre-award and future permitting activities at the local, state, and federal level including: mapping or aerial photography showing total area of ground disturbance and vegetation removal including staging areas and access roads; wetland delineation, functional assessment and mitigation design; special-status species survey, if needed; cultural and historical resources evaluation; stream and aquatic habitat restoration planning, if needed; aquatic resources survey and assessment, if needed; water quality regulations evaluation, if needed, documentation and development of public outreach activities, and Section 404 permitting. Consulting services require coordination with LMWD, FEMA Region 8, and various other agencies including the State of Colorado Office of Emergency Management, CDPHE, CWCB, CPW, SHPO, USACE.

SECTION 2: ADMINISTRATIVE REQUIREMENTS AND SELECTION CRITERIA

2.1 OBJECTIVE OF REQUEST FOR PROPOSAL

The objective of this RFP is to provide sufficient information to enable qualified Respondents to submit written proposals for Engineering Consulting Services primarily related to compliance with the National Environmental Policy Act (NEPA) for the referenced project during the pre-award phase. The RFP is not a contractual offer or commitment to purchase products or services.

2.2 ADDENDA TO THE REQUEST FOR PROPOSAL

If it becomes necessary to revise any part of the RFP, an addendum will be placed online at: <http://www.lookoutmountainwaterdistrict.org/category/dam-safety-lbb-2018/> prior to **September 14, 2018**. Respondents are responsible for checking online prior to submission of their proposal and acknowledge receipt of addendum(s) within their proposal.

2.3 ANSWERS TO WRITTEN QUESTIONS

Answers to written questions will be placed online at: <http://www.lookoutmountainwaterdistrict.org/category/dam-safety-lbb-2018/> by close of business on **September 17, 2018**. Respondents are responsible for checking online for answers to written questions. LMWD will not send out a separate communication with the answers.

2.4 NON-MANDATORY PRE-PROPOSAL SITE VISIT

A Pre-Proposal, non-mandatory site visit is scheduled for **September 10, 2018, 1:00 p.m.** Please limit your firm's attendance to one representative. Firms wishing to send a representative to this site visit will need to request the visit no later than **September 6, 2018, 5 p.m.** by email: cshea@blacklockintegrated.services. Planning is needed to provide for safe site access and further instructions will be provided.

2.5 TERMS AND CONDITIONS

Respondents selected to provide services should be prepared to accept the terms and conditions as set forth. The successful Respondent is required to maintain suitable insurance until final acceptance of all work covered by their proposal, at its own expense and without cost to LMWD, the types and amounts of insurance as indicated in the Agreement.

2.6 AWARD OF CONTRACT

The Consulting Engineering Services Agreement may be negotiated with Respondent whose proposal is determined to be most responsive to needs and most advantageous to Lookout Mountain Water District (LMWD), considering the criteria described below and all as solely determined by LMWD. It is not LMWD's intent to base selections solely on price.

2.6.1 Selection Criteria

Selection criteria may include, but are not limited to and in no particular order:

- Experience and qualifications
- Experience with similar projects
- Key personnel assigned to the project and proposed subcontractors or subconsultants
- References from similar past projects
- Price proposal (rates and fees)
- Approach
- Willingness to abide by the Terms and Conditions as outlined and provided for in the Agreement and included within this RFP

Award of the Consulting Engineering Services Agreement may be made without discussion after proposals are received. Proposals should, therefore, be submitted initially on the most favorable terms of qualifications, technical experience, and in the separate price proposal.

LMWD reserves the right to reject any or all proposals. Selection of the successful Respondent will not be based solely on the lowest cost, but on the proposal that provides the best value to the project owner (LMWD).

2.7 AGREEMENT

Award of the Consulting Engineering Services Agreement does not establish an exclusive agreement with the Respondent. LMWD reserves the right to obtain the same and/or additional services from other sources.

2.8 RESPONDENT RESPONSIBLE FOR PROPOSAL COSTS

LMWD is not liable for any cost incurred by any Respondent associated with the preparation of a proposal or the negotiation of the Consulting Engineering Services Agreement for services prior to the issuance of such Agreement. Respondent is responsible for costs associated with responding to the RFP including costs related to site visit.

2.9 ECONOMY OF PROPOSAL

Respondent must submit a complete and concise response to the RFP, which will be retained by LMWD. Proposals should be prepared simply and economically, while providing complete details of the Respondent's abilities to meet the requirements of this RFP.

2.10 PROPOSALS BINDING

Respondents are advised that proposals shall be binding upon the Respondent for sixty (60) days from the proposal due date. A Respondent may withdraw or modify their proposal any time prior to the proposal due date by a written request, signed in the same manner and by the same person who signed the proposal.

2.11 NOTIFICATION

Each Respondent submitting a proposal in response to this RFP will be notified as to acceptance or rejection of their proposal using online media at <http://www.lookoutmountainwaterdistrict.org/category/dam-safety-lbb-2018/>. LMWD plans to issue such notices within ten (10) days of the proposal submittal date. LMWD may delay this action if it is deemed to be in the best interest of LMWD.

2.12 RIGHT TO REJECT PROPOSALS, NEGOTIATION AND PROHIBITION

LMWD reserves the right to reject any and all proposals and to waive any formality in proposals received, to accept or reject any or all of the items in the proposal, if it is deemed in LMWD's best interest.

LMWD reserves the right to negotiate any and all elements of the proposal, if such action is deemed to be in the best interest of LMWD.

Any firms that may have been involved in reviewing or participating in the preparation of this request for proposals are expressly prohibited from responding with a proposal.

2.13 CONFIDENTIALITY

Respondents acknowledge that LMWD may be required to disclose any or all of the documents submitted with a Response, pursuant to the Colorado Open Records Act, C.R.S 24-72-200.1, et seq. Under C.R.S § 24-72-204(3)(a)(IV), LMWD may deny inspection of any confidential commercial or financial information furnished to LMWD by an outside party. Therefore, a Respondent must clearly designate as such any documents submitted with its Response that the Respondent deems proprietary or confidential, to aid LMWD in determining what should be disclosed in the event of a request for documents under the Colorado Open Records Act.

SECTION 3: PROPOSAL FORMAT AND CONTENT

3.1 GENERAL SUBMITTAL REQUIREMENTS

The following submittal requirements must be satisfied for each section of this RFP. This information will be used as the basis for selection.

Information must be legible. Corrections and erasures must be initialed. Each proposal shall be accompanied by a cover letter signed in ink by an authorized representative of the Respondent, as noted in Section 3.2. The contents of the proposal submitted by the successful Respondent of the RFP may become part of any contract awarded resulting from this solicitation.

3.2 PROPOSAL FORMAT

The proposal format shall be as follows:

All Sections and Page Limits. See 2.9 above. The page limit(s) noted include tables, figures, photographs and other graphical representations, all of which must be included within the same contiguous section. Page limits refer to limits of text (e.g., double-sided prints will be counted as two (2) pages). The maximum is 30 pages including the Price Proposal.

Font Size. The font size for text pages shall be no smaller than 10 point. The overall proposal presentation must be legible. Illegible proposals will not be considered.

Cover Letter. One (1) page maximum. Pages must be 8 1/2" x 11". The cover letter must contain the signature of a duly authorized officer or agent of the Respondent's company empowered with the right to contractually bind the Respondent.

Summary Pages. Two (2) pages maximum. Pages must be 8 1/2" x 11". The summary pages should provide an at-a-glance indication of the professional and technical skills and a one-page Organization Chart summarizing staff and sub-consultants to be part of the consulting team and project management, if applicable. Other summary information can include qualifications and experience and other unique or useful information.

Company Background. Two (2) pages maximum. Pages must be 8 1/2" x 11". At a minimum, provide information relative to your firm including: firm name(s), business address, telephone number, state in which the firm was organized or incorporated, type of ownership, name and location of parent company and subsidiaries, if any, and indication of whether the firm is licensed to do business in the State of Colorado. Identify if the firm is one of, or a combination of: SBE, MBE or WBE (see Section 3.6).

Consulting Services and Demonstrated Abilities. Three (3) pages maximum. Pages must be 8 1/2" x 11", except one of the three (3) pages may be in an 11" x 17" tri-fold format. Submittal detail is provided in Section 3.3.

Resumes and/or Sub-consultants Profiles: Resumes or profiles of sub-consultants can be included at the Respondent's discretion. Twenty (20) pages maximum. Resumes or profiles should be included in a separate section following the Consulting Section. Resume and sub-consultant profile must be limited to two (2) pages, one-sided, or one (1) page front and back for each person or firm submitted.

Price Proposal. Two (2) pages maximum. Pages must be 8 1/2" x 11". The Price Proposal shall include:

- Rates or Fees Schedule
- Costs of sub-contractors or sub-consultants, listed with either rate schedules or an estimated total cost, as applicable.
- Reimbursable expenses: Provide a list of reimbursable expenses and basis for compensation.
- Progress Billing Schedule: Provide a proposed billing schedule or frequency of billing to LMWD.
- Compensation for Additional Services: Fee basis for any additional services that are anticipated by the Respondent and basis for compensation, which should include any other costs the LMWD may anticipate relating to the services that are necessary to be provided.

Additional Information. LMWD does not intend to review additional information and requests that it is not submitted.

3.3 CONSULTING SERVICES SECTION

Proposed Team Qualifications. Qualifications and experience of key staff, as applicable to this Proposal. Provide information on demonstrated abilities to respond rapidly project requests and to meet project staffing needs, schedules, and budgets.

Staff Location. Location(s) of the office(s) where the project services will be performed, including the main project office location where the project team (potential project manager as well as technical and support staff) will be based.

Relevant Experience. Relevant project experience including, but not limited to a list of at least two (2) relevant projects that have been completed during the past ten (10) years by the firm; suggested information to include:

- Project/Client/Location
- Identifying Project Number
- Project/Client Contact(s) (for Reference)
- Key Team Members
- Start Date
- Completion Date
- Size/Capacity
- General Work Performed. These relevant projects are to be tied to the Respondent's proposed team rather than projects completed by the firm in general. LMWD intends to contact some or all client references.

Approach. Describe the firm's approach to the scope as described in Section 1.4, including management of time and costs.

PRE-AWARD CONSULTING ENGINEERING SERVICES CONTRACT
FOR THE RISK REDUCTION SPILLWAY AND DAM SAFETY MODIFICATIONS
AT LOWER BEAVER BROOK PROJECT

THIS CONTRACT ("Contract"), entered into the date set forth on the signature page is between the Lookout Mountain Water District, a quasi-municipal corporation, a special district organized March 12, 1988 and operated under Title 32 of the Colorado Revised Statutes, acting by and through its Board of Directors, hereinafter referred to as "District" or "LMWD", and _____, a Colorado corporation, with its principal place of business at _____, hereinafter referred to as the "Contractor". The parties to this Contract, each in consideration of the rights and obligations hereinafter specified, agree as follows:

1. Incorporation into Contract: It is especially understood and agreed that the Request for Proposals, FEMA Addendum, Contractor's Proposal, any addenda to the Request for Proposals, and Contract Documents which are applicable to the Project and which are available online at <http://www.lookoutmountainwaterdistrict.org/category/dam-safety-lbb-2018>, together with any alterations and modifications as may be made, are each and all included in and made part of the Contract (hereinafter referred to as the "Contract Documents").
2. Work to be Performed: The Contractor agrees that it will, in good and workmanlike manner, at its own cost and expense and strictly in accordance with this Contract, including all documents incorporated herein, furnish all labor, material and equipment and do all work necessary, or incidental to complete the following Scope of Work for the Risk Reduction Spillway and Dam Safety Modification at Lower Beaver Brook Project:
 - a. Prepare and submit permit applications and supporting documentation needed for compliance with the National Environmental Policy Act (NEPA) and for development of the Environmental Analysis (EA) for the project, as necessary to complete the project, and assist with obtaining all agency approvals in a timely manner. This will be accomplished with the direct participation of the LMWD staff, contractors and representatives. LMWD reserves the right to make the final decision on which permits to apply for and what approaches to take in the permitting process. Documentation developed prior to and related to the project will be provided by the LMWD to the successful Respondent in support of these activities.
 - b. Assist and support ongoing pre-award and future permitting activities at the local, state, and federal level including: mapping or aerial photography showing total area of ground disturbance and vegetation removal including staging areas and access roads; wetland delineation, functional assessment and mitigation design; special-status species survey, if needed; cultural and historical resources evaluation; stream and aquatic habitat restoration planning, if needed; aquatic resources survey and assessment, if needed; water quality regulations evaluation,

if needed, documentation and development of public outreach activities, and Section 404 permitting. Consulting services require coordination with LMWD, FEMA Region 8, and various other agencies including the State of Colorado Office of Emergency Management, CDPHE, CWCB, CPW, SHPO, USACE.

3. Quality of Performance: The Contractor shall perform the Contract in a manner satisfactory and acceptable to the District. The District shall be the sole judge of the quality of performance.
4. Schedule of Work: The Contractor shall perform the Work during the hours designated by the District so as to avoid inconvenience to the District and its personnel and interference with the District's operations.
5. Payment: In consideration of the foregoing, the District hereby agrees to pay to the Contractor the amounts required for the completed project at the base bid price of \$0,000.00 (THOUSAND DOLLARS AND 00/100THS), all according to the provisions and subject to the conditions as set forth in the Contract Documents. Contractor shall submit, in writing, to the District, a request for all payments. Upon receipt of all Deliverables as specified in paragraph 7, Deliverables, final payment shall be paid upon the satisfactory completion of the Project. The District, in its sole discretion, shall determine satisfactory completion.
6. Term and Time: This Contract shall begin and become effective on and as of the date of execution by the parties which date is specified on the signature page of this Contract. It is further agreed that time is of the essence and work shall begin within five (5) days of execution of the Contract, unless determined differently by the District, in its sole discretion, and be completed by _____, unless additional time shall be allowed by the District, in writing. The Contract shall be in full force and effect, subject to the Termination provisions as set forth in paragraph 17 of this Contract.
7. Deliverables: Upon completion of the Project, Contractor shall furnish the District with all Deliverables, as specified in paragraph 2, Work to be performed, subparagraphs a and b, all as related to documents incorporated into this Contract. Final payment will not be issued until District has approved and received all said Deliverables. Contractor acknowledges final payment terms as specified in paragraph 5, Payment.
8. Retainage: The District reserves the right to withhold a retainage of ten percent (10%) on any or all payments until all of the work is accepted by the District, at its sole discretion, as satisfactory and complete.
9. Indemnity: The Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Contractor, its employees, agents, representatives or other persons acting under the Contractor's direction or control in performing or failing to perform the Work under this Contract. The Contractor will indemnify and hold harmless the District, its elected and appointed officials, and its employees, agents and representatives (the "indemnified

parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of the Contractor, its employees, agents or representatives, or other persons acting under the Contractor's direction or control.

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

11. Insurance Requirements: The Contractor shall procure and maintain at its own expense, and without cost to the District, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:

a. Commercial General Liability.

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

b. Automobile Liability.

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

c. Workers' Compensation and Employer's Liability.

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

d. Professional Liability (Errors and Omissions).

i. All contractors required to be professionally certified by the State of Colorado (i.e., architects, engineers, doctors, nurses, etc.) and/or any consultants whose errors in judgment, planning, design, etc. could result in economic loss to the District, must provide proof of professional liability coverage with minimum limits of \$1,000,000 Per Loss and \$1,000,000 Aggregate.

ii. Professional Liability provisions indemnifying for loss and expense resulting from errors, omission, mistakes or malpractice is acceptable and may be written on a claims made basis. The contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years

beginning at the time work under this Contract is completed.

e. The Contractor shall provide a Certificate of Insurance to the District demonstrating that the insurance requirements have been met prior to the commencement of Work under this Contract. The District shall be named as an additional insured for all insurance policies (except workers' compensation), as designated in the contract. Additional insured shall be endorsed to the policy.

i. THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: Lookout Mountain Water District, a quasi-municipal corporation, State of Colorado, is named as Additional Insured.

ii. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the District, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to

Lookout Mountain Water District
Attn: _____

iii. If any insurance company refuses to provide the require notice, the Contractor or its insurance broker shall notify the District of any cancellation, suspension, and/or non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect. Such notice shall be sent directly to:

Lookout Mountain Water District
Attn: _____

Please forward certificates to the above certificate holder.

12. Nondiscrimination: The Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, state and federal laws respecting discrimination and unfair employment practices.

13. Nondiscrimination Provisions Binding on Subcontractors: In all solicitations, either by competitive bidding or negotiation, by the Contractor for any Work related to this

Contract to be performed under a subcontract, including procurement of materials or equipment, the Contractor shall notify each potential subcontractor of the Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices, as set forth above.

14. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, as determined by the District within its sole discretion, the District shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the Contract until the Contractor complies with the nondiscriminatory provision set forth in paragraph 12 of this Contract; and/or
 - b. cancellation, termination, or suspension of the Contract, in whole or in part, effective upon seven (7) days written notice to the Contractor pursuant to paragraph 17 of this Contract.

15. Subcontractors: The Contractor will include the provisions of paragraphs 12 through 14 in every subcontract, including procurement of materials and leases of equipment. The Contractor will take such action with respect to any subcontractor or procurement as the District 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 supplier as a result of such direction, the District may, at its own discretion, enter into such litigation to protect the interests of the District.

16. Post Completion: Final payment made to the Contractor, on account of the work, shall not operate to relieve the Contractor of responsibility for any mistakes or errors in submitted work product, and unless otherwise provided, the Contractor shall remedy any defect due thereto and pay for any damages resultant therefrom.

17. Termination and Related Remedies:
 - a. The other provisions of this Contract notwithstanding, financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. The District is prohibited by law from making financial commitments beyond the term of its current fiscal year. The District has contracted for goods and/or services under this Contract and has reason to believe that sufficient funds will be available for the full term of the Contract. Where, however, for reasons beyond the control of the Board of Directors as the funding entity, funds are not allocated for any fiscal period beyond the one in which this Contract is entered into, the District shall have the right to terminate this Contract by providing seven (7) days written notice to the Contractor pursuant to paragraph 19, and will be released from any and all obligations hereunder. If the District terminates the Contract for this reason, the District and the Contractor shall be released from all obligations to perform Work and make payments hereunder, except that the District shall be

required to make payment for Work which has been performed by the Contractor prior to the effective date of termination under this provision; and, conversely, the Contractor shall be required to complete any Work for which the District has made payment prior to providing written notice to the Contractor of the termination. In such an event, the District is released from all liability whatsoever and will not be responsible for payment of any costs or expenses incurred in reliance upon this Contract beyond that amount which has been appropriated and made available for this Contract and neither party shall have any further liability hereunder, said Contract to cease and terminate as of such date.

- b. If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract, or fails to perform any provision of the Contract, the District, after seven (7) days written notice to the Contractor and without prejudice to any other remedy it may have, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the Contract and may finish the Work by whatever method it may deem expedient, if such expense exceeds the unpaid balance of the Contract, the Contractor shall pay the difference to the District.
 - c. In the event the District exercises either of the termination rights specified in paragraphs 17(a) or 17(b), this Contract shall cease to be of any further force and effect, with the exception of all Contract remedies which are specified herein and may otherwise be available to the parties under the law, and with the exception of any rights or liabilities of the parties which may survive by virtue of this Contract.
 - d. The preceding provisions notwithstanding, the District may terminate this Contract, either in whole or in part, for any reason, whenever the District determines that such termination is in the District's best interests. Such termination shall be effective after the District provides seven (7) days written notice to the Contractor pursuant to paragraph 17. Termination of work hereunder shall be effected by the delivery to the Contractor of a "Notice of Termination" specifying the extent to which performance of work, under the Contract, is terminated and the date upon which such termination becomes effective. After receipt of the "Notice of Termination", the Contractor shall cancel its outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. The Contractor shall then submit a written claim for all outstanding amounts to the District, due within the timeframe as specified, thirty (30) days, upon receipt of "Notice of Termination", from the District.
18. Independent Contractor: The Parties recognize and agree that the Contractor is an independent contractor for all purposes, both legal and practical, in performing services under this Contract, and that the Contractor and its agents and employees are not agents

or employees of the District for any purpose. As an independent contractor, the Contractor shall be responsible for employing and directing such personnel and agents as it requires to perform the services purchased under this Contract, shall exercise complete authority over its personnel and agents, and shall be fully responsible for their actions. Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from the District, its elected officials, agents, or any program administered or funded by the District. Contractor shall be entitled to unemployment insurance or workers' compensation insurance only if unemployment compensation coverage or workers' compensation coverage is provided by Contractor, or some other entity that is not a party to this Contract. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this Contract.

19. Notices: For purposes of the notices required to be provided under paragraphs 11 and 17, all such notices shall be in writing, and shall be either sent by Certified U.S. Mail - Return Receipt Requested, by email, or hand-delivered to the following representatives of the parties at the following addresses:

For the District:
Lookout Mountain Water District
Attn: _____

For the Contractor:
Name of Company: _____
Project Contact: _____
Address: _____
City, State ZIP: _____

- a. In the event a notice is mailed pursuant to the provisions of this paragraph, the time periods specified in paragraph 17 shall commence to run on the day after the postmarked date of mailing.
20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally. Without limiting the scope of this provision, the Contract is specifically subject to the following statutory requirement: Contract payments may be withheld pursuant to C.R.S. § 38-26-107 if the District receives a verified statement that the Contractor has not paid amounts due to any person who has supplied labor or materials for the project.
21. Prohibitions on Public Contract for Services: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, et seq., as amended, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- a. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- b. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- c. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- d. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- e. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- f. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- g. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- h. If Contractor violates any provisions of this Section of this Agreement, the District may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the District.

22. Amendments: This Contract may be altered, amended or repealed only on the mutual agreement of the District and the Contractor by a duly executed written instrument.
23. Limitation on Damages. Under no circumstances shall the District be liable to Contractor for special, punitive, indirect, or consequential damages suffered by Contractor arising out of, or in connection with, this Agreement, including, without limitation: lost profits, loss of use, or loss of opportunity.
24. Taxes. The District is a governmental entity and is therefore exempt from state and local sales and use tax. The Contractor shall use the District's sales tax exemption for the purchase of any and all products and equipment on behalf of the District.
25. Relationship of Parties. Nothing in this Agreement will be construed to create a partnership, joint venture, franchise, fiduciary, employment, or agency relationship between the parties. Neither party has any express or implied authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement, or undertaking with a third party.
26. Professional Services. It is understood that the District enters into this Agreement based on the special abilities of the Contractor and that this Agreement shall be considered an agreement for professional services. Accordingly, the Contractor shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the District. The Contractor accepts the relationship of trust and confidence established between the Parties. The Contractor shall use its best efforts and shall perform the services hereunder at or above the standard of care of those in its profession or industry providing similar services in the District's local area; provided, however, that in the event the standard of care is higher in the local area where the Contractor's office primarily responsible for providing the services is located, then the standard of care applicable to the local area where the Contractor's office is located shall be applicable to such services. Contractor shall conduct their business and perform all work in accordance with federal, state, county, and local laws, regulations, ordinances, and codes.
27. Ownership of Work Product. All documents such as reports, plans, drawings, specifications, information, and other materials prepared or furnished by the Contractor (or the Contractor's independent professional associates, subcontractors, and consultants) and paid for pursuant to this Agreement are instruments of public information and property of the District. The District understands such documents are not intended or represented to be suitable for reuse by the District or others for purposes outside the specific scope and conditions of the Scope of Services. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the District's sole risk and without liability or legal exposure to the Contractor, or to the Contractor's independent professional associates, subcontractors, or consultants.
28. Assignment: This Contract shall not be assigned or subcontracted by the Contractor

without the prior written consent of the District.

29. Benefit to Successors and Assigns: This Contract shall be binding upon the successors and assigns of the parties.
30. Governing Law: The laws of the State of Colorado shall govern the interpretation and enforcement of this Contract. Any litigation that may arise between the parties involving the interpretation or enforcement of the terms of this Contract shall be initiated and pursued by the parties in the Jefferson County Courts of the 1st Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.
31. Breach: Any waiver of a breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
32. Termination of Prior Agreements: This Contract cancels and terminates, as of its effective date, all prior agreements between the parties relating to the services covered by this Contract, whether written or oral or partly written and partly oral.
33. Severability: If any provision of this Contract is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
34. Third Party Beneficiary: The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the District and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.
35. Information and Reports: The Contractor will provide to authorized governmental representatives, including those of the District, County, State and Federal Government, all information and reports which they may require for any purpose authorized by law. The Contractor will permit such authorized governmental representatives access to the Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where any information required by any such authorized government representative is in the exclusive possession of a person other than the Contractor, then such Contractor shall so certify to the District, and shall explain what efforts it has made to obtain the information.
36. Execution by Counterparts; Electronic Signatures: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the Parties to this Agreement: (1) Electronic or

facsimile delivery of a fully executed copy of a signature page; (2) The image of the signature of an authorized signer inserted onto PDF format documents. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

IN WITNESS WHEREOF, the Lookout Mountain Water District Board President, acting for and on behalf of the Board of Directors of Lookout Mountain Water District, and the Contractor has executed this contract, all on the day and year first above set forth.

Executed by Lookout Mountain Water District on _____
Board of Directors

ATTEST: _____

By: _____

CONTRACTOR
A COLORADO CORPORATION

ATTEST: _____

By: _____ By: _____

Title: _____ Title: _____

Executed by CONTRACTOR on _____.

(If this Contract is executed on behalf of a corporation, it must be signed by an agent duly authorized by the corporation to execute such Contract, and if specified by the corporate by-laws, the corporate seal must be affixed to the Agreement by the Secretary of the corporation or other authorized keeper of the corporate seal.)

CONTRACTOR'S CERTIFICATION OF COMPLIANCE Pursuant to Colorado Revised Statute, § 8-17.5-101, et seq., as amended 5/13/08, as a prerequisite to entering into a contract for services with Lookout Mountain Water District, a quasi-municipal corporation, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, et seq., in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Company Name Date

Name (Print or Type)

Signature

Title

Note: Registration for the E-Verify Program can be completed at:
<https://e-verify.uscis.gov/enroll/>.

ADDENDUM TO CONTRACT

FEDERAL EMERGENCY MANAGEMENT AGENCY'S GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS

This is an addendum to the Agreement between _____ (“Contractor”), and Lookout Mountain Water District (“District”)

The parties acknowledge that the above-referenced contract is subject to the provisions of 44 CFR § 13.36 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). This addendum is hereby expressly incorporated into the agreement between the District and the Contractor. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control. Nothing in this Addendum shall be construed as making this Agreement contingent upon a Presidential disaster declaration or FEMA’s approval or obligation of funds.

The following provisions are hereby added and incorporated into the above-referenced Agreement:

1. **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** *(applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 44 CFR§13.36(i)(3))*
Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).
2. **ANTI-KICKBACK ACT COMPLIANCE** *(applicable to all contracts and subgrants for construction or repair; 44 CFR§13.36(i)(4))*
Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
3. **ACCESS TO RECORDS**
 - A. The Contractor agrees to provide the District, State of Colorado, FEMA, 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 Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR§13.36(i)(10).
 - B. 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.
 - C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date District makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the District, State of Colorado, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 44 CFR§13.36(i)(11).
4. **CONTRACT WORK HOURS AND SAFETY STANDARDS** *(applicable to construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers; 44 CFR §13.36(i)(6))*
Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

5. NOTICE OF REPORTING REQUIREMENTS

- A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44CFR§ 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions

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

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

7. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
 - (1) The copyright in any work developed with the assistance of funds provided under this Agreement;
 - (2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)- (9).
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. ENERGY CONSERVATION REQUIREMENTS

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

9. CLEAN AIR AND WATER REQUIREMENTS (*applicable to all contacts in excess of \$100,000 including indefinite quantities where the amount is expected to exceed \$100,000 in any year; 44 CFR §13.36(i)(12))*)

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation
- A. Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- B. Contractor agrees to report each violation of these requirements to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

10. TERMINATION FOR CONVENIENCE OF DISTRICT (*applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2)*)

- A. District shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. District shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- B. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the date specified by District and to minimize the liability of Contractor and District to third parties as a result of termination. All such actions shall be subject to the prior approval of the District. Such actions shall include, without limitation:
 - (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by District.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At District 's direction, assigning to District any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, District shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (5) Subject to District 's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that District designates to be completed prior to the date of termination specified by District.
 - (7) Taking such action as may be necessary, or as the District may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which District has or may acquire an interest.
- C. Within 30 days after the specified termination date, Contractor shall submit to District an invoice, which shall set forth each of the following as a separate line item:
 - (1) The reasonable cost to Contractor, without profit, for all services and other work District directed Contractor to perform prior to the specified termination date, for which services or work District has not already tendered payment.

Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice. Taking such action as may be necessary, or as the District may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which District has or may acquire an interest.

- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of District, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
 - (3) The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the District or otherwise disposed of as directed by the District.
- D. In no event shall District be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by District, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- E. In arriving at the amount due to Contractor under this Section, District may deduct:
- (1) All payments previously made by District for work or other services covered by Contractor's final invoice;
 - (2) Any claim which District may have against Contractor in connection with this Agreement;
 - (3) Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and
 - (4) In instances in which, in the opinion of the District, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and District's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
- F. District's payment obligation under this Section shall survive termination of this Agreement.

11. TERMINATION FOR DEFAULT

Contractor's failure to perform or observe any term, covenant or condition of this document (Federal Emergency Management Agency's Emergency Management Performance Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

Agreement:

- (1) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from District to Contractor.
 - (2) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.
 - (3) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.
- B. On and after any Event of Default, District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between District and Contractor all damages, losses, costs or expenses incurred by District as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.
- C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy

Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect

Accepted by Contractor on

Accepted by Lookout Mountain Water District on

_____, 2018

_____, 2018

By: _____

By: _____

Title

Title