

**IDAHO ENVIRONMENTAL COALITION, LLC**

**SUPPLEMENTAL PROVISIONS FOR  
TIME AND MATERIAL AND LABOR HOUR (T&M/LH) CONTRACT TYPE**

**1. DEFINITIONS** – See General Provisions

**2. ORDER OF PRECEDENCE** – See General Provisions

**3. CONTRACT TYPE**

**3.1 Labor Hour.** If this Order’s contract type is identified as a Labor Hour, the direct labor hours are to be provided at specified fixed fully burden hourly rates that include wages, indirect costs, taxes, duties, insurance, license fees, expenses, general and administrative cost, overhead, and profit consistent with the Subcontractor’s established accounting practices and profit.

3.1.1 “Hourly rate” means the rate(s) prescribed in the Order for payment for labor that meets the labor category qualification of a labor category specified in the Order. No other direct costs (ODCs) for materials will be reimbursed under this Order.

**3.2 Time and Materials.** If this Order’s contract type is identified as Time and Material (T&M), labor and materials shall be reimbursed as agreed upon and outlined in this Order.

3.2.1 “Hourly rate” means the rate(s) prescribed in the Order for payment for labor that meets the labor category qualification of a labor category specified in the Order that are (a) performed by the Subcontractor; (b) performed by the Lower-tier Subcontractors; or (c) Transferred between divisions, subsidiaries, or affiliates of the contractor under common control.

3.2.2 “Materials” means: (a) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control; (b) Lower-tier Subcontracts for supplies and incidental services for which there is not a labor category specified in the Order; (c) other direct costs (*e.g.*, incidental services for which there is not a labor category).

**3.1 Limitation of Funds (Ceiling Price) – Derived from FAR 52.232-22**

**3.1.1** The Order (or Order release) specifies the dollar amount authorized, the items covered, and the period of performance the amount will cover. The Subcontractor agrees to perform Work on the Order up to the point at which the total amount paid and payable under the Order approximates but does not exceed the total amount authorized on the Order.

**3.1.2** The authorized funding shall be considered a ceiling price which may not be exceeded until the Company’s SA notifies the Subcontractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Order.

**3.1.3** The Subcontractor shall notify the Company’s SA in writing whenever it has reason to believe that the costs it expects to incur under this Order in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the Order. The notice shall be submitted by an submit an Information Review/Change Order (“IRCO Form”), FRM-2210 and state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

**3.1.4** The Subcontractor shall notify the Company’s SA in writing of the estimated amount of additional funds required to continue timely performance under the Order or for any further time specified in

the period of performance and when the funds will be required.

- 3.1.5 If after such notification additional funds are not allocated by the agreed upon required date, upon Subcontractor's request, the Company's SA shall terminate this Order on the performance end date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination provision of this Order.
- 3.1.6 The Company is not obligated to reimburse the Subcontractor for costs incurred in excess of the ceiling price and the Subcontractor is not obligated to continue performance under this Order or otherwise incur costs in excess of the total authorized funding, until the Company's SA notifies the Subcontractor in writing of the revised, increased ceiling price.
- 3.1.7 When, and to the extent that the ceiling price of the Order is revised, any excess costs the Subcontractor incurred before such modification shall be allowable to the same extent as if incurred afterward, unless this Order was terminated.

#### **4. CHANGES/MODIFICATIONS**

##### **4.1 Change Terms**

- 4.1.1 The Company's SA or the Company's Subcontract Manager are the only individuals authorized to bind the Company contractually in performance of Work under this Order.
- 4.1.2 Any failure by Subcontractor to assess requirements described in the Work shall not be accepted as a basis for entitlements to an equitable adjustment pursuant under this Article.
- 4.1.3 No Subcontractor claim is allowed after final payment under this Order.
- 4.1.4 The Subcontractor shall continue performing Work while any Subcontractor Modification request is pending. However, the Subcontractor shall not start the additional Work until the Company provides written approval.
- 4.1.5 If the Work is reduced by modification, such action will not constitute a claim for damages based on loss of anticipated profits. However, failure to agree to any adjustment shall be a dispute within the meaning of the Article of these General Provisions entitled "Disputes."
- 4.1.6 Nothing herein will be construed as relieving Subcontractor of its obligations to perform, including without limitation, the failure of the Parties to agree upon Subcontractor entitlement to, or the amount of, any adjustment in price or period of performance.
- 4.1.7 Company shall not be liable for, and Subcontractor hereby waives, any claim or potential claim in which Subcontractor did not report a modification in accordance with the provisions of this Article.
- 4.1.8 Except as may be expressly set forth in this Order and with the government contracting officer's express consent, this Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

##### **4.2 FAR 52.243-3 Changes-Time-and-Materials or Labor-Hours. (Sept 2000), Modified**

(a) [The Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this [Order] in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.)

- (3) Place of performance of the services.
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
  - (5) Method of shipment or packing of supplies.
  - (6) Place of delivery.
  - (7) Amount of Buyer-furnished property.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this [Order], whether or not changed by the order, or otherwise affects any other terms and conditions of this [Order], the [Company] will make an equitable adjustment in any one or more of the following and will modify the [Order] accordingly:
- (1) Ceiling price.
  - (2) Hourly rates.
  - (3) Delivery schedule.
  - (4) Other affected terms.
- (c) The [Subcontractor] shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. [Subcontractor shall submit an Information Review/Change Order (“IRCO Form”), FRM-2210]. However, if the [Company] decides that the facts justify it, the [Company] may receive and act upon a proposal submitted before final payment of the [Order].
- (d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the [Subcontractor] from proceeding with the [Order] as changed.

### **4.3 Material/Equipment Changes**

- 4.3.1 No substitutions to Goods shall be made in this Order without the prior written consent of the Company.
- 4.3.2 The Company shall have the right by written direction to make changes to the specification and drawings for goods or services covered by this Order.
- 4.3.3 If Subcontractor believes that such change affects the price or delivery date for such goods or services, Subcontractor shall so notify Company in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Subcontractor shall suspend performance of the change unless thereafter released in writing by Company to perform said change, and Company and Subcontractor shall mutually agree in writing upon an equitable adjustment in the Price and/or delivery date to reflect the effect of such change.
- 4.3.4 Subcontractor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Subcontractor receives direction to make such changes. Subcontractor shall not suspend performance of the unaffected portion of this Order while Company and Subcontractor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Company. If released in writing by the Company, Subcontractor shall comply with and perform such changes in accordance with the terms of this Order during the time Subcontractor and Company require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Order shall be binding upon Company nor will extra compensation be paid by Company unless the agreement or understanding is made in writing.

#### **4.4 Subcontractor Change Request**

- 4.4.1 Subcontractor may submit an IRCO Form if Subcontractor knows or should have known of a change, revision, addition, or deletion of the Work, Subcontractor shall give the Company written notice within five (5) calendar days after the happening of any event which Subcontractor believes may give rise to an adjustment in Price, schedule or any other terms or conditions.
- 4.4.2 Upon receipt of the IRCO Form, the Company shall review and submit it to the DOE for approval, if applicable. Any Price or Schedule adjustment granted to Company by DOE relating to the Work, is a condition precedent to any obligation by Company to sign a change/modification.
- 4.4.3 If DOE approves the Modification request, Company shall issue a written Modification to this Order which will be effective once signed by both Parties. If DOE does not approve the Modification Request, the Company, at its sole discretion, may sign a written modification.

#### **4.5 Delays and Extension of Time**

- 4.5.1 If the Subcontractor intends to file a claim for a time extension for a delay, it will, within forty-eight (48) hours of the occurrence, give written notice of the claim to the Company's SA stating the circumstances, the possible extension involved, and the reasons for the claim.
- 4.5.2 Within seven (7) calendar days after the cause of delay has been remedied, the Subcontractor will give written notice to the Company's SA of the actual time extension requested.
- 4.5.3 Within fifteen (15) calendar days after the Subcontractor submits to the Company's SA a specific written request for a time extension, the Company will make the final decision on the request for a time extension.
- 4.5.4 No time extension will be considered for weather conditions in the area in which the Work is being performed unless determined by the Company's STR to warrant such extension. Unusual weather conditions, if determined by the Company to be of a severity that would stop all progress of the Work, may be considered as cause for a time extension.
- 4.5.5 Delays in delivery of equipment or material purchased by the Subcontractor or its Lower-tier Subcontractors (including Company-selected equipment) or failure of the Subcontractor or its Lower-tier Subcontractors to perform will not be considered as a just cause for a delay unless the Company was responsible for causing the delay rather than the Subcontractor. The Subcontractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials, unless the Company caused impact beyond the Subcontractor's control.

**5. PRIME CONTRACT TERMS AND CONDITIONS**

In addition to the Prime Contract Flowdown Clauses, the following Prime Contract clauses are hereby incorporated by reference into this Order and shall be in full force unless an exception applies, otherwise noted below, or otherwise specified in the clause.

**5.1 Applicable to all Time and Material/Labor Hour Contract Type Orders**

<b>Prime Contract Clause No.</b>	<b>FAR/DEAR Reference</b>	<b>Title</b>
H.54	N/A Full Text Below	Subcontractor Timekeeping Records Signature Requirement
I.217	952.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (Dec 2012)

**6. FULL TEXT BELOW CLAUSES**

**6.1 Substitution of the Parties**

Wherever required to make any FAR clause incorporated herein meaningful, the term “Contractor” shall be read “Subcontractor,” the term “Administrative Contracting Officer” or “ACO” shall be read “Subcontracts Administrator”, “SA”, or “Buyer”, the term “Head of the Contracting Activity” shall be read “Supply Chain Manager” - and the term “Government” or “Contracting Officer” shall be read “Subcontracts Administrator”, “SA”, or “Buyer”.

**6.2 (H.54) Subcontractor Timekeeping Records Signature Requirement**

The Contractor shall obtain timecards for all hourly Order employees, at all tiers, performing on non-fixed-price subcontracts. For purposes of this Clause, non-fixed-price subcontracts are those of a type containing a cost reimbursable or variable component in them, which includes those contract types covered by FAR Subpart 16.3, Cost Reimbursement Contracts, FAR Section 16.405, Cost Reimbursement Incentive Contracts, and FAR Subpart 16.6, Time and Materials, Labor Hour, and Letter Contracts. Note that the requirements of this Clause also pertain to Task Orders, tasks, and/or Contract Line Items Numbers from Indefinite Delivery (see FAR Subpart 16.5, Indefinite Delivery Contracts) and hybrid contracts that are of a type covered by the FAR citations in the prior sentence. The timecards must be obtained by the Contractor prior to the Contractor paying for these Order costs and prior to billing DOE for these costs. The timecards must reflect actual hours worked, be signed by the Order employee, and be certified by the Order employees’ supervisor prior to the Contractor obtaining them. Subcontractors at all tiers performing work under non-fixed-price subcontracts shall maintain adequate timekeeping procedures, controls, and processes for billing Government work. The Contractor shall, at least once every three years, conduct a labor audit of non-fixed-price subcontracts. The audit shall be conducted to unmodified Institute of Internal Auditors standards, if conducted internally, or unmodified Generally Accepted Government Auditing Standards (GAGAS), if conducted externally. This Clause shall be flowed down to all non-fixed-price subcontracts at all tiers.

**END OF SUPPLEMENTAL PROVISIONS TIME AND MATERIAL AND LABOR HOUR (T&M/LH) CONTRACT TYPE**