Group 01800 – Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

APPENDIX C

Authorized users that may want to seek federal funds from the federal funding agencies for the purchase of goods or services during a declared disaster are advised that federal funding agencies require particular terms and conditions be included in the contract for those goods and services. For the convenience of authorized users, those terms and conditions are set out below and can also be found at the FEMA website.

Authorized users of statewide contracts should consider adding this language to future purchase orders and secondary level competitions (often referred to as RFQs or mini- bids), unless the language is already attached to the statewide contract. State agencies making purchases to respond to disasters through a vehicle other than a centralized contract are required by Section H.6. of Budget Bulletin H-501R to include these and other terms into their contracts using the Appendix set forth in the Budget Bulletin.

Federal Funding Agency Mandatory Terms and Conditions

The following provisions are required by federal funding agencies in order for expenditures by Authorized Users to be eligible for federal reimbursement in the event of a State declaration of disaster emergency pursuant to Section 28 of the Executive Law.

1. REMEDIES

Remedies for Contractor failure to observe or perform any term or condition shall be as provided in the OGS centralized contract (if applicable), including all appendices.

2. TERMINATION FOR CAUSE AND CONVENIENCE

Termination for cause and convenience will be in accordance with Termination, Appendix B, General Specifications, if a statewide centralized contract, and Section 5, Copeland Anti-Kickback Act, of this document and/or the rules and regulations of your governing authority.

3. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the contract, OGS centralized contract (if applicable) or any purchase by an Authorized User, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. The Contractor 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 Contractor's legal duty to furnish information.

D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor 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.

F. The Contractor 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.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the OGS centralized contract or with any of the said rules, regulations, or orders, the OGS centralized contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions 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.

H. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Authorized User 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 Authorized User 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 Authorized User agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors 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 Authorized User 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 Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Authorized User agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Authorized User under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Authorized User; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT. (Applicable to all construction contracts in excess of ($2,000)

A. If applicable, all transactions regarding the OGS centralized contract or any purchase by an Authorized User shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable.

The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

C. Additionally, Contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT. (Applicable to all construction contracts in excess of ($2,000)

A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.

B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

C. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. (Applicable to all contracts in excess of $100,000 that involve employment of mechanics and laborers)

A. Overtime requirements. No Contractor or subcontractor for any part of the contract work 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 paragraph (b)(1) of this section, the Contractor 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 paragraph (b)(1) of this section, in the sum of $26 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 paragraph (b)(1) of this section.

C. Withholding for unpaid wages and liquidated damages. The Authorized User 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 Contractor or subcontractor under any such contract or any other Federal Agreement with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

All such rights shall be addressed in accordance with Ownership/Title to Project Deliverables, Appendix B, General Specifications.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. (Applicable to all contracts in excess of $150,000)

Clean Air Act

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et, seq.

B. The Contractor agrees to report each violation to the contract manager or the Office of General Services and the Authorized User if a statewide centralized contract and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

Federal Water Pollution Control Act

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. The Contractor agrees to report each violation to the Office of General Services and Authorized User and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

9. DEBARMENT AND SUSPENSION

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's 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 Contractor 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 or Authorized User. If it is later determined that the Contractor 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 or an Authorized User, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

10. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

If the OGS centralized contract or any purchase by an Authorized User has a value of $100,000 or more, Contractor 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 who in turn will forward the certification(s) to the awarding agency.

Group 01800 – Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

A. Required Certification. If applicable, Contractors must sign and submit to the State the following certification.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements. The undersigned certifies, to the best of his or her knowledge and belief, that:

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor,_____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official_____

Name of Contractor's Authorized Official_____

Title of Official_____ Date:_____

11. PROCUREMENT OF RECOVERED MATERIALS

A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired —

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program

C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

12. ACCESS TO RECORDS

A. The Contractor agrees to provide the Office of General Services or the Authorized User, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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 provide the Federal funding agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

D. The State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal funding agency or the Comptroller General of the United States.

13. CHANGES

Amendments to this contract shall be in accordance with the terms of the OGS centralized contract.

14. FEDERAL SEAL(S), LOGOS, AND FLAGS

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

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

This is an acknowledgement that Federal funding agency financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or other federal agency policies, procedures, and directives.

16. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract or any purchase by an Authorized User and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract or any purchase by an Authorized User.

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

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract or any purchase by an Authorized User.

18. FEDERAL DEBT

The Contractor certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

19. CONFLICTS OF INTEREST

The Contractor shall notify the Office of General Services and Authorized User as soon as possible if this Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Office of General Services and Authorized User is able to assess the actual or potential conflict. The Contractor shall provide any additional information necessary for the Office of General Services and Authorized User to fully assess and address the actual or potential conflict of interest.

20. U.S. EXECUTIVE ORDER 13224

Contractor, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.