

**TOWN OF OCEAN RIDGE
TOWN COMMISSION REGULAR MEETING
AGENDA**



**June 6, 2022
6:00 P.M.
TOWN HALL – MEETING CHAMBERS**

TOWN COMMISSION

Mayor Susan Hurlburt

Vice Mayor Kristine de Haseth
Commissioner Geoff Pugh

Commissioner Steve Coz
Commissioner Martin Wiescholek

ADMINISTRATION

Town Manager Tracey L. Stevens

Town Attorney Christy Goddeau
Chief of Police Richard Jones

Town Clerk Karla M. Armstrong
Building Official Durrani Guy

RULES FOR PUBLIC PARTICIPATION

1. **PUBLIC COMMENT:** The public is encouraged to offer comments with the order of presentation being as follows: Town Staff, Public Comments, Commission discussion and official action. Town Commission meetings are business meetings of the Commission and the right to limit discussion rests with the Commission. **Generally, remarks by an individual will be limited to one time up to three minutes or less regarding any single item on the agenda.** The Mayor or presiding officer has discretion to adjust the amount of time allocated.
 - A. Public Hearings: Any citizen is entitled to speak on items under this section.
 - B. Public Comments: Any citizen is entitled to be heard concerning any matter within the scope of jurisdiction of the Commission under this section. The Commission may withhold comment or direct the Town Manager to take action on requests or comments. The Commission meetings are held for the purpose of discussing and establishing policy and to review such other issues that affect the general welfare of the Town and its residents. Where possible, individual grievances should first be taken up with the Town Staff.
 - C. Regular Agenda and First Reading Items: When extraordinary circumstances or reasons exist and at the discretion of the Commission, citizens may speak on any official agenda item under these sections.
2. **ADDRESSING THE COMMISSION:** At the appropriate time, please step up to the podium and state your name and address for the record. All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Commission shall be barred by the presiding officer from speaking further, unless permission to continue or again address the Commission is granted by a majority vote of the Commission members present.

APPELLATE PROCEDURES

Please be advised that if a person decides to appeal any decision made by the Town Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is based. The Town neither provides nor prepares such record. (F.S. Section 286.0105)

Persons who need an accommodation in order to attend or participate in this meeting should contact the Town Clerk at (561) 732-2635 at least 5 days prior to the meeting in order to request such assistance.

**NOTICE: THE PUBLIC MAY VIEW THE HARD COPY OF THE MEETING MATERIALS AT
TOWN HALL BEFORE OR DURING THE MEETING**

CALL TO ORDER**ROLL CALL****PLEDGE OF ALLEGIANCE****ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA****PRESENTATIONS & PROCLAMATIONS**

- a. Update by County Mayor Robert Weinroth

ANNOUNCEMENTS

- a. The meeting schedule for the next month is as follows: Budget Meeting Tuesday, July 5th at 2:00 PM followed by the Regular Town Commission Meeting at 6:00 PM; Community Standards Hearing Tuesday, June 7th at 10:00 AM; and Planning & Zoning Commission Meeting Tuesday, June 21st at 8:00 AM. All meetings are held in the Commission Chambers at Town Hall.
- b. The Town is hosting a blood drive event with One Blood on Friday, July 1st from 9am - 3pm and Saturday, July 2nd from 9am – 3pm. The bus will be parked behind Town Hall. All those who wish to donate blood, can sign up through a link posted on the Town's website. All donors will receive a \$20 E-gift Card, a T-Shirt, and a wellness checkup including blood pressure, temperature, and iron count.
- c. Town Hall will be closed on Monday, June 20, 2022 in observance of Juneteenth, and on Monday, July 4th in observance of Independence Day.
- d. Please join us each month prior to the Town Commission meeting at 5:00 p.m. for the Building Official Educational Forum in the Commission Chambers at Town Hall. Details including topics to be discussed each month are on the Town's website.
- e. Residents who wish to sign up to receive important Town notifications and news through Civic Ready should sign up on the Town's website or call Town Hall for assistance.

PUBLIC COMMENT – (3 minute individual limit)**APPROVAL OF CONSENT AGENDA (Items that do not require discussion)**

1.
 - a. Adopt Minutes of the Special Town Commission Meeting of April 18, 2022
 - b. Adopt Minutes of the Regular Town Commission Meeting of May 2, 2022
 - c. Ratify Emergency Expenditures to Madsen Barr and LineTec for Water Line Break Repairs at 12 Inlet Cay Drive
 - d. Approve Solid Waste Authority's Piggyback Storm Debris Management Contracts with Thompson Consulting, Ashbritt, Crowder Gulf, DRC, and Phillips & Jordan
 - e. Approve Land Development/Building Permit Extension for Palm Beach County's Ocean Inlet Park Marina Project
 - f. Approve Building Permit Extension Request for 24 Hudson Ave
 - g. Approve Refund of \$1,500 for 33 Hersey Drive Variance Application for Dune Crossover Construction
 - h. Approve First Amendment to Interlocal Agreement for Law Enforcement Services for the Town of Briny Breezes

REGULAR AGENDA ITEMS

2. Old Ocean Blvd Pedestrian Safety (By: Town Manager Stevens)
3. Request for Building Permit Extension for 6273 N. Ocean Blvd (By: Town Attorney Goddeau)
4. Approve Budgeted Expenditure for Repair of the Porter Street Crossover under the Best Interest Acquisition Provision in the Town Code (By: Town Manager Stevens)
5. Approve Budgeted Expenditure for Repair of the Ocean Avenue Sidewalk Pavers under the Best Interest Acquisition Provision in the Town Code (By: Town Manager Stevens)

STAFF & COMMITTEE REPORTS

6. Planning & Zoning Commission
7. Town Manager
8. Town Attorney
9. Police Chief
10. Town Engineer & Public Works
11. Building Official

TOWN COMMISSIONER COMMENTS

12. Referendum to Preserve Conservation Land (By: Commissioner Wiescholek)
13. Growth Management Considerations (By: Vice Mayor de Haseth)

ADJOURNMENT

Live Audio Feed Provided for the Regular Town Commission Meeting

Based upon a Town Commission decision, the Town of Ocean Ridge will be holding the meeting in-person, with an additional option of listening to the audio live.

Regular Town Commission meetings are generally held on the first Monday of every month at 6:00pm. Please visit www.oceanridgeflorida.com to see when the next Town Commission meeting will be.

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Town of Ocean Ridge will meet for the purpose of reviewing items as described on the agenda. The agenda along with the meeting package was posted on the Town's website, at Town Hall, and in Town Hall's shadow box the Wednesday prior to the meeting.

A copy of the agenda & the package may be obtained by contacting the Town Clerk at:
Karmstrong@oceanridgeflorida.com.

PLACE: The meeting will be held at the physical access point of Town Hall, 6450 N. Ocean Blvd, Ocean Ridge, FL 33435. The Town of Ocean Ridge will provide a live audio feed for those that cannot attend the physical access point. Interested persons may listen by using the following information:

- Please dial in using your phone. United States: [+1 \(872\) 240-3212](tel:+18722403212) and Access Code: 930-143-117

PUBLIC COMMENTS:

Persons that are unable to attend the meeting in person may submit public comments by utilizing the following options:

1. Email the Town Clerk at karmstrong@oceanridgeflorida.com by 3. p.m. on the meeting date. The email must contain the agenda item number and exactly what is to be read out loud at the meeting (3 minute limit). The Town Clerk will respond to the email if it has been received. If you do not receive a response email from the Town Clerk, assume that it was not received and follow up with a phone call to Town Hall at 561-732-2635. The Town Clerk will read the public comment into the record when the item is taken up.
2. Call Town Hall at 561-732-2635 before 3 p.m. on meeting date. Tell Town Hall Staff which agenda item you would like to submit a comment on, and submit your comments to them (3 minute limit). Town Hall staff will notify the Town Clerk of the public comment, and the Town Clerk will read the public comment into the record when the item is taken up during the meeting.

ADDITIONAL INFORMATION:

The recording of the meeting along with the action item summary sheet will be available to the public the following day.

Consistent with section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Town Commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Persons who need an accommodation in order to attend or participate in this meeting should contact the Town Clerk at (561) 732-2635 at least 5 days prior to the meeting in order to request such assistance.

SPECIAL TOWN COMMISSION MEETING MINUTES
APRIL 18, 2022

CALL TO ORDER

The meeting was called to order by Mayor Hurlburt at 5:00 p.m.

ROLL CALL

Town Clerk Armstrong led the roll call, which was answered by the following:

Commissioner Coz	Present
Vice Mayor de Haseth	Present
Mayor Hurlburt	Present
Commissioner Pugh	Present
Commissioner Wiescholek	Present

PLEDGE OF ALLEGIANCE

Mayor Hurlburt led the pledge of allegiance.

Mayor Hurlburt called for a moment of silence for long term resident, Dr. Ted Ritota.

ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA

Commissioner Wiescholek moved to approve the agenda as submitted; seconded by Vice Mayor de Haseth. Motion carried 5-0.

PUBLIC COMMENT – (3 minute individual limit)

Mayor Hurlburt called for public comment, and there was none.

1. Goal Setting / Determination of Town Commission Fiscal Priorities for FY23

a. Town Manager Overview

Town Manager Stevens advised that the objective of this meeting is for the Commission to establish their goals for the Town for Fiscal Year 2023. She asked for each Commissioner to discuss their goals, and to summarize a consensus at the end of the meeting.

b. Town Commission Discussion of Goals for FY23

Commissioner Pugh Goals:

He noted that all his goals are listed in the package, but he would like for the town to focus on adding natural gas throughout the town at the same time as the septic to sewer conversion. He further added that the town should stay up to date with its road paving schedule. Another item that Commissioner Pugh would like to work on is the Building Department permit process for homeowners.

Vice Mayor de Haseth Goals:

She voiced the importance of having strong reserves and asked for the 5-year capital plan to be extended to 10-years. She further asked for the town to apply for additional grants and work on partnering with a similar municipality for a lobbyist.

She noted the financial impact that the updates to the potable water infrastructure and septic to sewer conversion will have on the town. She asked for the town to explore all its options, and that this becomes a top priority since condominiums are on a deadline. Commissioner Coz asked if injection wells would be allowed if sewer is mandated, and Vice Mayor de Haseth informed that she believes it would still be allowed. Commissioner Coz and Vice Mayor de Haseth discussed the possible options for condominiums. Vice Mayor de Haseth re-iterated that the town should have a lobbyist to help obtain grants from the state for the conversion.

SPECIAL TOWN COMMISSION MEETING MINUTES APRIL 12, 2022

Vice Mayor de Haseth asked that the charter be changed to require a referendum whenever a large financial commitment is needed for a project. She advised that a threshold could be added and anything above the threshold would need a referendum, such as the septic to sewer conversion. Commissioners discussed the pros and cons of having this as a rule.

Vice Mayor de Haseth asked for there to be more community education from all departments. She asked for the Building Official to do his forums quarterly while in season and for the Mayor to help with the promotions of the event.

Commissioner Coz Goals:

He advised that the town needs to plan and address the issues that will arise from the increased traffic from Boynton Beach. He further asked that the town continue to partner up with the community on projects for budgeting purposes, and for Administration to start looking into the variety of technologies. He asked that the Town start using an automated system to answer phones at Town Hall. Commissioner Pugh disagreed with Town Hall using an automated system. Police Chief Jones discussed the automated system that dispatch uses during hurricane events. Commissioner Pugh noted the difference between Town Hall and Dispatch.

Commissioner Coz asked for the town to consider purchasing properties to use for drainage like the retention pond at Woolbright. He would also like to work on building the relationship between town staff and residents. They discussed the permit timeframes and the benefits of the new system.

He would like to create a realistic timeframe for construction work that factors in current challenges. And secondly, resolving the current conflict between Town codes and private association codes that narrow the window of construction to an unworkable timetable. Vice Mayor de Haseth stated that association codes are not an issue, but that timeframes should be extended to 18 months with the option for a 6-month extension at no cost.

He is in favor of the town hosting more events where vendors come in and educate residents, such as Waste Pro showing what is to be recycled and what is not.

Commissioner Wiescholak Goals:

He asked the other Commissioners if they are satisfied with the Police Department service or if adjustment is needed. All commissioners were in favor of the department as it is. He asked the town to research the ability to get its own fire station, to which Town Manager Stevens noted the expense and the lack of infrastructure. He also advised that the water infrastructure should be a priority and that the City of Boynton Beach should give viable options. He voiced his concern with deferring items and asked that priority items be considered.

Mayor Hurlburt:

She reviewed her goals as outlined and asked for an update on the Septic to Sewer Citizen Advisory Committee, and Town Manager Stevens stated that the Commission will need to budget for staff and consultants to meet with the group. Mayor Hurlburt noted that the Maintenance department needs additional help and asked the police department if they need additional help. She further asked that the town have more interaction with the residents.

SPECIAL TOWN COMMISSION MEETING MINUTES APRIL 12, 2022

c. Public Comments Regarding Town Commission Goals & Fiscal Priorities

Mary Kate Leming, 2 Harbour Drive North, noted that flooding should be of concern and should be mentioned more in the meetings. She also asked that sidewalks be fixed or the town to work with FDOT on getting them fixed. She noted that the sidewalk cracks are from contractors that go on them.

Zoanne Hennigan, 91 Island Drive, noted that certain Police Department service can be paid by the resident instead of by the town to help enhance the budget. She noted that the new building department software will be beneficial to the town.

d. Consensus Direction to Management Regarding Fiscal Priorities for FY23

They summarized the agreed items, which included: infrastructure, flooding, Septic to Sewer and Potable Water.

Vice Mayor de Haseth asked if the Town Engineer could present the 5-year capital plan at a future budget meeting. Town Manager Stevens stated that she works alongside the Engineer on the 5-year capital plan regarding infrastructure.

Commissioner Pugh asked if maintenance projects are up to date, and Town Manager Stevens noted that there are a lot of items that Public Works does, and projects are being maintained as best as they can manage with the current staffing. Vice Mayor de Haseth noted that some issues are caused by residents. Commissioner Pugh noted that a lot of items are needed for an owner builder permit.

Mayor Hurlburt asked Town Manager Stevens to give an update on the potable water negotiations. Town Manager Stevens briefly explained where the process is and asked the Commission if they would explore the possibility of giving up the potable water infrastructure. There was consensus for the Town Manager to explore all options that the City of Boynton Beach is willing to provide for them to make an informed decision. Commissioner Pugh re-iterated that natural gas should be made available. He discussed the pros of natural gas.

Vice Mayor de Haseth re-iterated that the capital plan should be extended to 10 years, and asked Town Manager Stevens if special assessments would be needed to convert to septic to sewer. Town Manager Stevens advised that it depends on who is going to be responsible for the infrastructure. A solid plan needs to be determined before the Town looks into assessments. They discussed different ideas for funding the septic to sewer conversion.

Mayor Hurlburt asked if there is a lack of staff in any department. Town Manager Stevens stated that there is a lack of help in the Public Works department. Commissioner Coz stated that the town should advertise for a 1099 contractor to help. The Commissioners and staff discussed whether some of these items need to be contracted out or an additional person hired for Public Works, and the pros and cons of each.

There was consensus on the following items:

- The Town to partner up with communities on projects.
- Increased Technology. Commissioner Coz asked staff to try the automated telephone system at Town Hall for a short period, and there was consensus to do this on a trial basis.
- Infrastructure. Increase the Capital Infrastructure Plan to 10-years.
- Purchase Land on Hudson or other places for drainage. Town Manager Stevens stated that the town would have to purchase equipment after the land purchase.
- Flood Mitigation.
- Explore the expense for a shared lobbyist.

SPECIAL TOWN COMMISSION MEETING MINUTES APRIL 12, 2022

- Community Education. Get volunteers and sponsors for all events and directed Town Manager Stevens to put \$15,000 to community items.
- Add Raftelis back in the budget.
- Provide Price Comparison for Public Works.

ADJOURNMENT

Meeting Adjourned at 6:38 p.m.

Minutes prepared by Town Clerk Armstrong and adopted by the Town Commission on June 6, 2022.

Susan Hurlburt, Mayor

ATTEST:

Karla M. Armstrong, Town Clerk

REGULAR TOWN COMMISSION MEETING MINUTES

MAY 2, 2022

Minutes of the Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, May 2, 2022, at 6:00 PM in the Town Hall Commission Chambers and live audio feed provided through Gotomeeting.com.

CALL TO ORDER

The meeting was called to order by Mayor Hurlburt at 6:00 p.m.

Mayor Hurlburt reminded that the live audio feed is no longer interactive and encouraged those that would like to make a public comment to attend in person, or send comments to the Town Clerk prior to the meeting.

ROLL CALL

Town Manager Stevens led the roll call, which was answered by the following:

Commissioner Coz	Present
Vice Mayor de Haseth	Present
Mayor Hurlburt	Present
Commissioner Pugh	Present
Commissioner Wiescholek	Present

PLEDGE OF ALLEGIANCE

Mayor Hurlburt led the Pledge of Allegiance.

A moment of silence was held for the passing of longtime resident, Dr. Ritota. The Commission sent their condolences to the family.

ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA

Commissioner Pugh moved to approve the agenda as submitted; seconded by Commissioner Wiescholek. Motion carried 5-0.

PRESENTATIONS & PROCLAMATIONS

- a. Annual Financial Statement Audit Presentation and Acceptance of FY21 Financial Statement Audit by the Town Commission

Town Auditor, Ron Bennett, presented the FY21 audit report to the Commission, and he informed that there were no deficiencies found. He commended staff on transparency and internal controls.

Commissioner Coz moved to accept the FY21 audit report; seconded by Vice Mayor de Haseth. Motion carried 5-0.

Mayor Hurlburt read Proclamations b through d into record and thanked all the respective departments for their service.

- b. Proclamation: Municipal Clerks' Week
- c. Proclamation: National Police Week & Peace Officers Memorial Day
- d. Proclamation: National Public Safety Telecommunicator's Week

- e. Concerned Citizens for Public Safety on or near Old Ocean Boulevard

Carolyn Cassidy was invited to the podium to present. The concerned citizens group met on various occasions to discuss their concerns and possible solutions for Old Ocean Blvd. Mrs. Cassidy presented the recommendations proposed by the group. The recommendations include installing temporary (removable) speed humps, adding signage stating "Residents Only; local access only", Paint a center line down the length of Old Ocean, Clear the 5' Right-Of-Way along Old Ocean, and Consider lowering the posted speed limit on Old Ocean. The group will continue to meet to discuss other possible options and ask that all the recommendations provided be considered for implementation by the Town Commission.

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

Commissioner Pugh asked if the some of the proposed signage would be added along A1A, and Mrs. Cassidy confirmed that it would be.

Mayor Hurlburt proposed hosting a workshop to discuss the recommendations. Commissioner Coz disagreed and asked that the recommendations be discussed at a regular meeting rather than a workshop. Commissioner Pugh concurred with Commissioner Coz. Mayor Hurlburt stated that a workshop would allow for the public to provide input, to which Mrs. Cassidy noted that their meetings were opened to the public. Mayor Hurlburt and Vice Mayor de Haseth stated that a workshop would allow the public to come and speak solely on that item. Commissioner Coz stated that the public will still be allowed to give input at a regular meeting and that the public could be alerted. Commissioner Pugh stated that placing it on a regular agenda would allow staff time to provide the information on the recommendations given. Commissioner Wiescholek preferred a regular meeting.

Vice Mayor de Haseth asked if the item could be a non-voting item at the regular meeting. Commissioner Pugh stated that the item needs to be a voting item to be able to advise staff on which recommendations to move forward with.

Stella Kolb, 204 Beachway Drive and member of the Concerned Citizen Group, asked for respect from the commission and asked for the recommendations to be considered. Vice Mayor de Haseth and Mayor Hurlburt stated that there is no disrespect, and they are just ensuring that the recommendations are heard.

Cindy Martel, 46 Harbour Drive South, stated that resources are being used on Old Ocean and that the any items approved needs to be consistent. She discussed some personal concerns.

Peter Buling, 7 Osprey Drive, noted the difficulties and challenges faced by the Commission. He stated that the group was able to meet and discuss all their issues freely. He asked that the Commission give respect to the exchange of ideas.

The Commission gave a consensus to the recommendations to the regular agenda of June 6, 2022.

ANNOUNCEMENTS

- a. The meeting schedule for the next month is as follows: Budget Meeting Monday, June 6th at 2:00 PM followed by the Regular Town Commission Meeting at 6:00 PM; Community Standards Hearing Tuesday, May 3rd at 10:00 AM; Planning & Zoning Commission Meeting Monday, May 16th at 8:00 AM; Board of Adjustment Meeting Monday, May 9th at 9:00 AM. All meetings are held in the Commission Chambers at Town Hall.
- b. The Town is hosting a blood drive event with One Blood on Friday, May 6th from 9am - 3pm and Saturday, May 7th from 10am – 4pm. The bus will be parked behind Town Hall. All those who wish to donate blood, can sign up through a link posted on the Town's website. All donors will receive a \$20 E-gift Card, a T-Shirt, and a wellness checkup including blood pressure, temperature, and iron count.
- c. Town Hall will be closed on Monday, May 30, 2022 in observance of Memorial Day.
- d. Please join us each month prior to the Town Commission meeting at 5:00 p.m. for the Building Official Educational Forum in the Commission Chambers at Town Hall. Details including topics to be discussed each month are on the Town's website.
- e. Residents who wish to sign up to receive important Town notifications and news through Civic Ready should sign up on the Town's website or call Town Hall for assistance.

PUBLIC COMMENT – (3 minute individual limit)

Jean Burling, 7 Osprey Drive, read into record a public comment by Janet Schijns at 120 Dolphin Road and President of Starbright Civic Collector. Mrs. Schijns introduced the new nonprofit group led by residents in the town called Starbright Civic Collector. She went over the goals and intent of the group. Mrs. Schijns

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

thanked the anonymous donor that helped form the organization. She gave insight into why the donor donated. Commissioners thanked Mrs. Schijns.

Terry Brown, Harbour Drive South, thanked the Commission for purchasing the land and preserving its status. He voiced the importance of appointing people with knowledge on the variance process to the Board of Adjustment. He suggested that a trained attorney educate the Board of Adjustment members.

Albert and Nancy Fornatora, 7 Inlet Cay Drive, discussed their issues with the approved variance for 8 Inlet Cay Drive at the November 17, 2021, Board of Adjustment meeting. Mr. Fornatora felt that the board did not due their due diligence. The Commission discussed the issues that have risen from the recent variance applications. Commissioner Wiescholek stated that there was no expert witness. Carolyn Cassidy, 7 Hudson Avenue and Board of Adjustment Member, noted that the board does their due diligence based on the information provided. Mrs. Fornatora stated that the board's decision impacted their property value. Commissioners understood and agreed that more education may be needed for members and that different ideas need to be explored to address the concerns.

James Lowe, 5700 Old Ocean Blvd, gave a personal recollection of his experience with dogs on the beach. He gave some suggestions from his experience in New Jersey.

The following comments were received by email to the Town Hall, and read into record by the Town Manager:

Penny and Gary Kosinski, 6000 Old Ocean Blvd, asked the Commission to not take any actions on the Old Ocean Blvd recommendations presented by the Concerned Citizens until the public has time to view the suggestions and provide their inputs.

Kim Jones, 6885 N Ocean Blvd, thanked the staff for their dedication. She told the Commission about her pleasant experience at the shred-it event at Town of Ocean Ridge.

Kathleen Ruberato, 6530 N Ocean Blvd, thanked the Commissioners for the purchasing the Priest property.

Fritz Devitt, 18 Harbour Drive South, discussed the issues with the process in reviewing for a variance during the Board of Adjustment meetings. He voiced his concern for setting precedence, and recommended that the Town Attorney do an education workshop

APPROVAL OF CONSENT AGENDA (Items that do not require discussion)

1.
 - a. Adopt Minutes of the Regular Town Commission Meeting of April 4, 2022
 - b. Adopt Minutes of the Special Town Commission Meeting of April 12, 2022
 - c. Acceptance of the Revenue & Expenditure Reports for March 2022
 - d. Ratify the unbudgeted emergency expenditure of \$27,885 to Rapid Equipment Response for Town Hall Generator Fuel Tank Replacement
 - e. Adopt Memorandum of Understanding Between the Town and the Palm Beach County Police Benevolent Association, Inc. Regarding Section 20.4 of the Agreement to Address Top Outs
 - f. Approve Building Permit Extension Requests and Waiver of Permit Renewal Fees for 28 Hudson Ave, 82 Island Drive, and 10 Harbour Drive South

Commissioner Pugh moved to approve the consent agenda; seconded by Commissioner Coz. Motion carried 5-0.

REGULAR AGENDA ITEMS

2. **Appointments to Open Positions on the Board of Adjustment & Planning & Zoning Commission (By: Town Clerk Armstrong)**

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

Town Manager Stevens outlined the rules for voting and notified who were on the ballots for both boards.

Town Manager Stevens proceeded with handing out the ballots for the Planning and Zoning Commission. The Commissioners voted, and it was unanimous for Robert Rodriguez and Roger Brinner to be the alternates for the Planning and Zoning Commission.

Commissioner Pugh moved to appoint Robert Rodriguez and Roger Brinner to serve as alternates for the Planning and Zoning Commission as shown on the ballots; seconded by Commissioner Wiescholek. Motion carried 5-0.

Town Manager Stevens proceeded with handing out the ballots for the Board of Adjustment. The Commissioners voted. The ballots showed Bruce Hindin as the winner for the regular position. The ballots also showed John Lipscomb and Nick Arsali to be the alternates for the Board of Adjustment.

Vice Mayor de Haseth moved to appoint Bruce Hindin to serve as regular member, and John Lipscomb and Nick Arsali to be the alternates the Board of Adjustment as shown on the ballots; seconded by Commissioner Wiescholek. Motion carried 5-0.

3. **Second Reading and Adoption of Ordinance No. 2022-04: An Ordinance of the Town of Ocean Ridge, Florida, An Ordinance of the Town of Ocean Ridge, Florida, Amending Its Code of Ordinances at Chapter 54, "Traffic And Vehicles," By Creating A New Article IV, Entitled "Combat Automobile Theft Program," and Establishing New Section 54-100, Entitled "Town of Ocean Ridge Combat Automobile Theft Program," and Creating New Section 54-101, Entitled "Definitions," and Further Establishing New Section 54-102, Entitled "Registration Requirements and Procedure," and Creating New Section 54-103, Entitled "Enrollment Implication, Termination and Civil Liability," Which Upon the Enacting of this New Program Will Serve to Permit and Assist Law Enforcement Officers to Detect, Apprehend and Prevent Automobile Thefts in the Town, Repeal of Conflicting Ordinances, Severability, and an Effective Date. (By: Town Attorney Goddeau)**

Town Manager Stevens read the ordinance into the record by title only.

Police Chief Jones noted that there have been no changes since the first reading of the ordinance, and that the program will be voluntary.

Mayor Hurlburt called for public comment, and there was none.

Commissioner Wiescholek moved to adopt Ordinance 2022-04 on second reading; seconded by Commissioner Coz. Motion carried 5-0.

4. **Second Reading and Adoption of Ordinance No 2022-05: An Ordinance of the Town of Ocean Ridge, Florida, Amending Its Code of Ordinances at Chapter 67, "Buildings and Building Regulations," Article III, Entitled "Technical Codes and Other Construction Standards," By Amending Section 67-51, Entitled "Permit Required Generally; Demolition Permits," To Authorize the Waiver of the Letter of Credit Requirement by the Building Official for a Demolition Permit Issued Pursuant to Subsection (B)(1) or any Other Demolition Permit for the Interior of a Structure; Providing For Repeal of Conflicting Ordinances, Severability, and an Effective Date (By: Town Attorney Goddeau)**

Town Manager Stevens read the ordinance into the record by title only.

Town Attorney Goddeau stated that this item is on second reading and would give the Building Official the discretion to waive the Letter of Credit requirement for interior and partial demolitions.

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

Commissioner Coz asked for clarification if walkways were included in the ordinance. Building Official Guy stated that walkways are not included in the ordinance and would not be consider demolition if being repair, replaced, or removed.

Mayor Hurlburt called for public comment, and there was none.

Commissioner Wiescholek had the same objection as during first reading.

Commissioner Pugh moved to adopt Ordinance No 2022-05 on second reading; seconded by Vice Mayor de Haseth. Motion carried 4-1 with Commissioner Wiescholek dissenting.

5. **Second Reading and Adoption of Ordinance No. 2022-06: An Ordinance of the Town of Ocean Ridge, Florida, Amending Its Code of Ordinances at Chapter 63, “General and Administrative Provisions,” Article IV, Entitled “Site Plan Review Procedures,” By Amending Section 63-56, Entitled “Development Plan Review,” By Modifying the Authority of the Planning and Zoning Commission to Permit the Deferral of a Development Plan Review Application; Providing For Repeal of Conflicting Ordinances, Severability, and an Effective Date (By: Town Attorney Goddeau)**

Town Manager Stevens read the ordinance into the record by title only.

Town Attorney Goddeau stated that the ordinance adds the ability for the Planning and Zoning Commission to defer as requested by the Town Commission and Planning and Zoning Commission at the Joint Workshop. She advised that the ordinance also aims to add verbiage to allow the Planning and Zoning Commission to review the landscaping for new development.

Commissioner Coz stated that the title block does not accurately show the change because the title block does not talk about the landscaping. Commissioner Pugh concurred that the title block should be clearer.

Vice Mayor de Haseth moved to adopt Ordinance No 2022-06 on second reading; seconded by Commissioner Wiescholek. Motion carried 3-2 with Commissioner Pugh and Commissioner Coz dissenting.

6. **First Reading and Adoption of Ordinance No. 2022-07: An Ordinance of the Town of Ocean Ridge, Florida, Amending Its Code of Ordinances to Correct the Name of the “C” Conservation Zoning District to Make it Consistent with the Current Comprehensive Plan, Zoning Map, and the Future Land Use Map Which All Refer to the “C” Conservation Zoning District as the “PC” Preservation/Conservation District, In Chapter 64, Zoning, Article I, District Regulations, Section 64-6, “C” Conservation District and in Chapter 65, Telecommunication Towers and Antennas, Sections 65-3, General Requirements, and Section 65-5, Special Exception Uses; and, Amending Chapter 63, General and Administrative Provisions, Article IV, Site Plan Review Procedures, Section 63-53, Major Development Application and Site Plan Requirements, to Encourage “PC” Preservation/Conservation Re-Zonings by Easing the Submittal Requirements for Re-Zoning Vacant Property to “PC” Preservation/Conservation; Providing for Repeal of Conflicting Ordinances, Severability, and an Effective Date (By: Town Attorney Goddeau)**

Town Manager Stevens read the ordinance into the record by title only.

Town Attorney Goddeau introduced the item by noting that the proposed ordinance would allow an applicant with an empty lot proposing a zoning change to preservation/conservation to not provide a survey, thus saving the applicant time and money.

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

Mayor Hurlburt called for public comment, and there was none.

Commissioner Wiescholek moved to adopt ordinance 2022-07 on second reading; seconded by Commissioner Coz. Motion carried 5-0.

7. **First Reading and Adoption of Ordinance No. 2022-08: An Ordinance of the Town Commission of the Town of Ocean Ridge, Florida, Amending Chapter 66 Environmental Regulations, Article IV Landscaping, Division 2 Water Efficient Landscape, Providing for Local Implementation of the Mandatory Year-Round Landscape Irrigation Conservation Measures Rule of the South Florida Water Management District (40e-24, F.A.C.); Providing for Intent, Purpose, Applicability and Definitions; Providing for Year-Round Landscape Irrigation Conservation Measures, Exceptions to the Schedule; Providing for Additional Requirements and Variances; Providing for Water Shortages; Providing for Enforcement and Penalties and for Other Purposes; and Providing for Codification, the Repeal of All Conflicting Ordinances, Severability and an Effective Date.**

Town Manager Stevens read the ordinance into the record by title only.

Town Attorney Goddeau introduced the item by noting that the item is localizing the law in place, so it can be locally enforced. Grant opportunities may be at stake if the law not locally adopted. Commissioner Coz asked about the watering days, and Town Attorney Goddeau confirmed the dates.

Mayor Hurlburt called for public comment, and there was none.

Commissioner Pugh discussed his issues with the title block and how it is not accurate. Town Manager Stevens stated that it is where it is being inputted. Commissioner Pugh stated that the ordinance change should not be added under water efficient landscape as it is not appropriate.

Vice Mayor de Haseth stated that the ordinance is just codifying the County's law and she is in favor.

Commissioner Wiescholek voiced his concern that the town has the burden of enforcing an ordinance from the South Florida Water Management District (SFWMD). He discussed further issues with the SFWMD. Vice Mayor de Haseth asked if the town should enforce a water management ordinance regardless of the county's ordinance. Commissioner Wiescholek stated that he is not aware of residents mismanaging its water to go to the extreme.

Commissioner Pugh asked Police Chief Jones if the Police Department has cited residents for violating the water codes. Police Chief Jones answered that officers have through a uniform code citation process. He stated that Ocean Ridge residents are not willfully violators. Commissioner Pugh asked how it was enforced without the ordinance. Town Attorney Goddeau stated that the town has a water shortage code and can enforce if water shortage is enacted. Town Attorney Goddeau stated that the title block is discussing where the code is being amended.

The Commission discussed the impacts if the ordinance were adopted versus not adopted. Town Attorney Goddeau noted that SFWMD can still enforce their regulations even if not locally adopted. She went over the intent or objective of the SFWMD.

Commissioner Coz asked if SFWMD notifies that they will be enforcing, to which Police Chief Jones stated that SFWMD has enforced in the past and does not notify the town. Police Chief Jones went over the enforcement policies.

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

Vice Mayor de Haseth asked Town Manager Stevens about the town's education mechanism for SFWMD new rules. Town Manager Stevens stated that she will check. All Commissioners were in favor of the town doing an education campaign about SFWMD regulations.

Commissioner Wiescholak moved to not adopt Ordinance No. 2022-08; seconded by Commissioner Pugh. Motion carried 3-2 with Mayor Hurlburt and Vice Mayor de Haseth.

8. Purchase of a Storage Facility for Public Works (By: Town Manager Stevens)

Commissioner Wiescholak stated that Public Works needs a storage facility, so that equipment does not get rusted outside in the salt environment. He went over the quotes and stated that the investment is reasonable. Police Chief Jones went over the various equipment's that had to be discarded because of the salt environment.

Commissioner Pugh stated that the storage facility would not be under warranty because it is close to the Ocean. Commissioner Wiescholak concurred, but noted the benefits that the storage facility would bring.

Mayor Hurlburt called for public comment.

Mark Marsh, 14 Hudson Avenue, asked for more information on the parking spaces. Commissioner Wiescholak stated that no parking spots will be lost because they are already being taken up by equipment. Police Chief Jones confirmed. Vice Mayor de Haseth asked if there is parking metric for Town Hall, and Town Manager Stevens stated that there is. Mr. Marsh asked for staff to check that parking spaces requirements are still met with the storage facility. Commissioners concurred. Town Attorney Goddeau stated that the zoning official can check to see if all the code requirements of the town are met.

Commissioner Wiescholak moved to approve the purchase of a storage facility for Public Works conditioned on ensuring zoning compliance for parking spaces; seconded by Commissioner Coz. Motion carried 5-0.

9. Request for Building Permit Extension for 6273 N. Ocean Blvd

Town Attorney Goddeau gave the Commission a status update and noted that the agreement is not ready.

Mayor Hurlburt called for public comment.

Michael Whiner, Attorney for John Shibles, stated that the proceeding should follow that of a Quasi-Judicial hearing. Town Attorney Goddeau informed that she notified all attorneys that she would ask the Commission to defer this item.

There was consensus to defer the item.

STAFF & COMMITTEE REPORTS

10. Planning & Zoning Commission

P&Z Chair Marsh read the Planning & Zoning Commission report into the record.

11. Town Manager

Town Manager Stevens advised that her report was included in the meeting package. She read her report into the record. She further advised that resident Brit Flanagan submitted her name after the deadline to be on the ballot for the alternate Planning and Zoning position.

12. Town Attorney

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

Town Attorney Goddeau did not have a report to present; However, she spoke about the variance process and that the burden falls on the applicant to produce the evidence for the consideration of the board. She stated that the applicant needs to ensure that everything is listed in the application. Further added, that the process can be changed to require construction plans to the variance application for a more detailed review.

Commissioner Coz asked if a variance decision sets precedence. Town Attorney Goddeau stated that the variance decision does not set precedent because every situation could differ; however, if the criteria is not being applied, then the board won't be held to the letter of the criteria.

Vice Mayor de Haseth asked for the applicant to list previous code violations on the property on the application. Town Attorney Goddeau stated that code violations could be listed, but that it is not part of the criteria. They discussed adding a history section to the variance application, so the applicant can list any violations they've had on the property.

Commissioner Coz stated that there is no penalty for applicants that do not provide the complete information.

Commissioner Wiescholek asked about staff analysis and staff recommendations. Town Manager Stevens went over the staff memo for the board to consider. Commissioner Pugh stated that the decision ultimately falls on the board members. Vice Mayor de Haseth suggested giving the variance process to a Special Magistrate. Town Attorney Goddeau spoke on the pros and cons of switching to a Special Magistrate.

Commissioner Wiescholek stated that board members need more education. Commissioner Pugh stated that more board members with experience need to be on the board. Betty Bingham, 1 Ocean Avenue and Board of Adjustment Member stated that the criteria needs to be applied and felt that members were not educated as they should. She advised that strict scrutiny and their impact on neighbors should be considered.

Commissioner Coz warned about changing the process over one incident. Commissioner Pugh stated that issues are arising because it has been a long time without a variance application. They discussed the guidelines for the variance and the board member's review. Commissioner Wiescholek, Commissioner Coz and Commissioner Pugh did not want to change up the system. Commissioner Wiescholek stated that he would like education.

Vice Mayor de Haseth summarized the suggestions, which included: adding a history section to the application, requiring construction plans as a part of the application, or having a special magistrate review variance applications. There was consensus to add a history section to the variance application. Town Manager Stevens suggested vamping the notices to include more language on how to challenge and appeal. Town Attorney stated that she would do an education forum at the next Board of Adjustment meeting. Commissioner Pugh stated that a report of board of adjustment decisions should be presented to the Commission to see if they would like to challenge any decisions. There was consensus to have a more extensive notice sent to neighbors.

13. Police Chief

Chief Jones advised that the Police Department report was included in the meeting package. He went over the contents in his report, and gave information on the life vac.

Vice Mayor de Haseth asked if we have a CERT program, to which Police Chief Jones stated that we do not have a program. He advised that the criteria to have one is cumbersome, but that we look at other communities.

14. Town Engineer & Public Works

REGULAR TOWN COMMISSION MEETING MINUTES MAY 2, 2022

The Town Engineer and Public Works reports were included in the meeting packages, and there were no comments from Commissioners.

15. Building Official

Building Official Guy advised that the Building Department report was included in the meeting package. He discussed the trainings that part-time inspector/plan examiner is doing.

TOWN COMMISSIONER COMMENTS

16. Roles of the Building Official & Building Department Staff (By: Commissioner Wiescholak)

Commissioner Wiescholak stated that there is feedback regarding the Building Official's decisions. He stated that in many instances the applicants are not doing what they are supposed to. He went over the goals of the Building Official and provided an example. He asked for Commissioners to defend and support the Building Official on his decisions. Vice Mayor de Haseth and Mayor Hurlburt concurred.

ADJOURNMENT

Meeting Adjourned at 8:53 p.m.

Minutes prepared by Town Clerk Armstrong and adopted by the Town Commission on June 6, 2022.

Susan Hurlburt, Mayor

ATTEST:

Karla M. Armstrong, Town Clerk

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Town Manager, Tracey Stevens

Meeting Date: June 6, 2022
Subject: 12 Inlet Cay Drive Water Line Break Repairs

Mayor & Commissioners:

As described in the attached field observation report, the Town called in Madsen Barr and Line Tec on May 2, 2022 to make emergency repairs to a broken water line at 12 Inlet Cay Drive. Town Staff and staff with the City of Boynton Beach believed at the time that the leak was coming from the Town's side of the system. However, through exploration, it was found that the leak was on the resident's side of the system and was likely caused by work that was performed without a permit. To prevent further damage to the Town's infrastructure, the contractor completed the work at that time.

Staff recommends ratification of the expenses to be paid to Madsen Barr in the amount of \$31,891 and Line Tec in the amount of \$981.84.

In the meantime, this case is being referred to the code enforcement special magistrate so the Town can re-coup the costs for the damages.

Respectfully,



Tracey L. Stevens, MMC
Town Manager & Finance Director



TOWN OF OCEAN RIDGE

6450 North Ocean Boulevard, Ocean Ridge, Florida 33435
(561) 732-2635 Main ♦ (561) 737-8359 Fax
oceanridgeflorida.com ♦ LBurns@oceanridgeflorida.com

FIELD OBSERVATION REPORT

PROJECT:	
PROJECT NO./PERMIT NO.:	DATE:
CONTRACTOR:	ARRIVAL TIME:
TYPE OF OBSERVATION:	DEPARTURE TIME:
REPORT BY:	

OBSERVATION (INCLUDE NAMES/PHONE OF ONSITE MEETINGS/INSPECTIONS; NARRATIVE ABOUT ISSUE/ INSPECTION/WORK, INCLUDE PICTURES BEFORE AND AFTER, INSPECTIONS CONDUCTED; FOLLOWUP REQUIRED, ETC. AND USE ADDITIONAL PAGES AS NEEDED):

PAGE 2 – FIELD OBSERVATION & TASK REPORT

PHOTOS:

MADSEN /BARR CORPORATION

Engineering Contractors • Sewer • Water • Drainage
Broward: (954) 489-7773 • Palm Beach: (561) 753-6363 • Fax: (561) 753-6382
E-mail: johnbarr@mdsenbarr.com



INVOICE DATE: MAY 19, 2022
INVOICE NUMBER: 19-99-103
MADSEN/BARR CORPORATION NUMBER: 4037

SOLD TO: TOWN of OCEAN RIDGE
6450 N. OCEAN BLVD.
OCEAN RIDGE, FL. 33435
ATTENTION: MR. WILLIAM ARMSTRONG, PUBLIC WORKS
SUBJECT: TOWN of OCEAN RIDGE
EMERGENCY WATER MAIN REPAIR
LOCATION: 12 INLET CAY DRIVE
SCOPE of WORK: Mobilize, Notifications, MOT, Dewatering, Repair Water Service and Abandon Existing, Restoration of All, Final Cleanup, Demobilize.
CONTRACT: CITY of BOYNTON BEACH, PROJECT # 019-2821-19/IT
"REPAIRS and EMERGENCY SERVICES for WATER DISTRIBUTION,
WASTEWATER COLLECTION and STORM WATER UTILITY SYSTEMS"

FURNISH and INSTALL:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
GC-2	Emergency Mobilization in R-O-W	1	LS	\$ 700.00	\$ 700.00
GC-7	Pre-During-Post Digital Photos	1	LS	\$ 415.00	\$ 415.00
GC-9	MOT (City Arterial Roadway)	1	EA.	\$ 745.00	\$ 745.00
WTR-22	Additional Crew Hours	4	HR.	\$ 915.00	\$ 3,660.00
WTR-93	Single Water Service	1	EA.	\$ 3,365.00	\$ 3,365.00
R-1	Remove and Dispose Concrete	190	SF	\$ 19.75	\$ 3,752.50
R-2	4-Inch Concrete	190	SF	\$ 26.90	\$ 5,111.00
R-13	Sod replacement	100	SF	\$ 4.15	\$ 415.00
R-32	Paver Bricks remove/replace	190	SF	\$ 72.25	\$ 13,727.50

TOTAL DUE MADSEN/BARR CORPORATION ***** \$ 31,891.00

NOTES: 1.) PERMITS and/or FEES NOT INCLUDED.
2.) PHOTOS ATTACHED.



John Barr
President

MADSEN / BARR CORPORATION

Engineering Contractors • Sewer • Water • Drainage

CELL: (954) 401-6758

EMAIL: johnbarr@madsenbarr.com

SOUTH OFFICE

3600 State Road 7 (441) Ste. 311
Miramar, FL 33023

NORTH OFFICE (ACCOUNTING)

12113 Indian Mound Road
Wellington, FL 33449



Date	Invoice #
5/6/2022	23320

241 NW 18th Ave | Delray Beach, FL | 33444 | Ph: 561.279.1032 | Fax: 561.279.1044 | www.linetecinc.com

Bill To

Town of Ocean Ridge
6450 N. Ocean Blvd
Ocean Ridge, Fl. 33435

P.O. No.	Terms	Project
	Net 30	12 Inlet Cay Drive, 1" Water Repair

Item	Description	Qty	Rate	Amount
	This invoice is for the emergency repair of a leaking 1" water service located at 12 Inlet Cay Drive in Ocean Ridge. Work included excavation of the water service, crew removed fitting at each side of the driveway, installed new 1" Sch 40 PVC using existing 1-1/4" pipe as casing and completed final connections to repair the leaking water service. The crew backfilled and completed restoration of the work area.			
90	Hourly rate, Foreman (Otto)	3.5	95.00	332.50
92	Hourly rate, Laborer (Marco - Santos)	7	75.00	525.00
95	Hourly rate, utility truck (#31)	3.5	20.00	70.00
104	Pass through on materials not covered under line items with markup (1" PVC and PVC fittings)	40.25	1.35	54.34
	Work completed 5/5/22			

Total		\$981.84
Balance Due		\$981.84



Change Utility



Help

Close

04/29/2022

05/06/2022

Quick Dates

73129489 - METER - A

Device ID

☐ Only Active

Device Number

73129489

Device Type

Meter

Meter Type

Water

Radio ID

18133126

Status

Active

Product Type

Unspecified

Account Number

43638

Customer Name

GOLDBERG LEE H

Parent

Unspecified

Location

12 Inlet Cay Dr Or Ocean Ridge FL 33435-5206

Latest Read

3286070 GAL 05/06/22 11:00:00 AM EDT

- [Data](#)
- [Alarms 1](#)
- [Watch Me](#)

• Download SVG vector image



Exceed Limit of Devices

You are adding this device to a device group that exceeds the operational limit of devices.

Are you sure you still want to add this device to the group?

Advanced virtual meter Warning

This group is part of the following Advanced Virtual Meters:

This group must be removed from these Advanced Virtual Meters or the Advanced Virtual meters must be deleted before performing this action.

- Quick Dates
- 3-Month View
- 6-Month View
- 12-Month View

73129489 - METER - A

91850

4,660

10,290

7180

9.450

2,430

14,830



You are adding this device to a device group that exceeds the operational limit of devices.

Cancel

Confirm

Advanced virtual meter Warning

This group is part of the following Advanced Virtual Meters:

OK

- Quick Dates
- 3-Month View
- 6-Month View
- 12-Month View

73129489 - METER - A

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Town Manager, Tracey Stevens

Meeting Date: June 6, 2022
Subject: Approval of Storm Debris Management Contracts

Mayor & Commissioners:

The Town has a need to select vendor(s) to assist with debris removal services that would provide the Town with the immediate ability, following a disaster/storm event, to safely and efficiently clear storm-related debris from public rights-of-way and ensure normal operations to our community as quickly as possible.

To ensure that the Town selects vendors that enable the Town to receive eligible federal funding reimbursement(s) following a federally declared disaster event, staff is recommending that the Town access/utilize the Palm Beach County Solid Waste Authority's (SWA) contracts that have been awarded to five (5) vendors. This selection by the Solid Waste Authority was completed through a competitive bid process.

If approved, the Town would access/utilize the SWA's contracts to obtain debris removal services (i.e. public rights-of-way collection, loading and hauling to a designated site accepting storm debris) based on the pricing in the SWA agreement.

Each of the vendors, Ashbritt, Inc., CrowderGulf, DRC Emergency Services LLC, Phillips and Jordan, Inc., and Thompson Consulting, entered into a 3-year contract with the Solid Waste Authority and meets the federal procurement standards to ensure FEMA compliance to maximize eligible Hurricane-related expense reimbursement for the Town. The same contractors were utilized by the Town from May 2017 to May 2022 for the same purpose.

If approved, the Town would accept the pricing of all five (5) vendors by accessing/utilizing the Palm Beach County Solid Waste Authority's contracts including all terms, conditions and pricing therein. The term of these contracts is set to expire on May 7, 2025.

The Town's Purchasing Code, Section 2-217, allows for the accessing of contracts of other government agencies, provides the Town may award a contract by accessing the goods and/or services from another governmental entity, provided that the same or substantially similar goods and/or services were competitively solicited.

In the event of an emergency storm event, the Town Manager will select the contractor(s) to utilize from the approved vendors based on availability of equipment and staff as well as the fee schedule.

Respectfully,



Tracey L. Stevens, Town Manager & Finance Director



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGREEMENT FOR

HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

ASHBRITT, INC.

AGREEMENT NO. 22-201A

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33412
(561) 640-4000**

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of APRIL 28th, 2022, (hereinafter referred to as the Agreement) by and between **Solid Waste Authority of Palm Beach County**, a dependent special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and **ASHBRITT, INC.**, (hereinafter referred to as CONTRACTOR and when referred to collectively with AUTHORITY, the Parties), a Corporation, whose Federal Employer ID Number is **90-0868875**;

Whereas, in accordance with the AUTHORITY's Request for Proposals No. 22-201/DL, solicited to employ the services of the CONTRACTOR for the purpose of providing Hurricane/Disaster Debris Removal, Reduction and Disposal, and;

Whereas, CONTRACTOR represents it is qualified, capable and prepared to provide such services.

Now, therefore, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is acknowledged by the other, the parties hereto agree as follows:

ARTICLE 1 - EFFECTIVE DATE AND INCORPORATION OF RECITALS

The foregoing recitals are hereby incorporated herein by reference.

- 1.1 The Effective Date of this Agreement shall be **May 8, 2022** and the Initial Term of this Agreement is for three (3) years and shall expire on **May 7, 2025**, unless terminated earlier as provided for herein.
- 1.2 The AUTHORITY shall have the option of extending this Agreement for three (3) additional years, as approved by the AUTHORITY's Board or designee, in its sole and unfettered discretion, on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both Parties.
- 1.3 The continuance of this Agreement from year-to-year is contingent upon successful annual recertification of the CONTRACTOR's capabilities. The recertification process will be a review of the fiscal (bankruptcy, etc.), logistical (equipment availability, etc.), and moral (conviction for environmental crime, conviction for crime against a public entity, etc.) responsibility of the CONTRACTOR and a determination by the AUTHORITY, based on this review, of whether or not the CONTRACTOR continues to be a viable firm to provide the services described in this Agreement.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR shall perform the services as specifically stated in the Scope of Work, attached hereto and made a part hereof as Exhibit A, and/or as may be specifically designated and authorized by the AUTHORITY. Such authorizations will be referred to as Task Orders. Each Task Order shall set forth a specific scope of services, rate/amount of compensation, completion date, and other pertinent details of the task being authorized. The AUTHORITY, by virtue of this Agreement, gives the CONTRACTOR no guarantee of any work/services or any specific amount of work/services that may be accomplished during the period this Agreement is in full force and effect.

ARTICLE 3 - COMPENSATION

- 3.1 The AUTHORITY shall pay CONTRACTOR in accordance with the Fee Schedule, attached hereto and made a part hereof as Exhibit B. In addition, the Parties may negotiate a lump sum or not-to-exceed amount on a per-project basis on an individual Task Order.

- 3.2 The CONTRACTOR shall submit semi-monthly invoices for services rendered. All invoices must reference the Task Order number. Invoices shall include a statement of progress and appropriate audit quality detail to satisfy the Federal Emergency Management Agency (FEMA) requirements.
- 3.3 Payment of CONTRACTOR by AUTHORITY is not contingent upon the AUTHORITY being reimbursed by the Federal Emergency Management Agency (FEMA). Payment to CONTRACTOR will be made for any work directed by the AUTHORITY which is determined by Federal and State agencies to be ineligible for reimbursement.
- 3.4 Payment of invoices shall be within thirty (30) days after receipt of a correct, fully documented invoice. All invoices shall be delivered to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attn: Accounts Payable

- 3.5 CONTRACTOR will clearly mark its final/last billing with the words "Final Invoice". This will certify that all services have been fully performed under this Agreement and that all charges and costs have been invoiced to the AUTHORITY. Thereupon, this account will be closed and any additional charges or costs, not included in the Final Invoice, shall be waived by CONTRACTOR. The AUTHORITY shall not be liable for the payment of any such additional charges or costs not included in the Final Invoice.
- 3.6 The AUTHORITY will retain 5% of the payment under each Task Order until such time as the entire project is completed to the AUTHORITY's satisfaction and all subcontractors and any material suppliers verify that they have been paid.

ARTICLE 4 - INSURANCE

- 4.1 During the performance of the Services under this Agreement, CONTRACTOR shall maintain the following insurance policies written by an insurance company authorized to do business in Florida and acceptable to the AUTHORITY.
1. **General Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$1,000,000 for each occurrence.
 2. **Automobile Liability** Insurance with bodily injury limits of not less than \$5,000,000 for each person and not less than \$5,000,000 for each accident and with property damage limits of not less than \$5,000,000 for each accident.
 3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.
 4. **Excess Liability** Insurance with limits of not less than \$10,000,000 for each occurrence and annual aggregate.
- 4.2 Deductible amounts shall not exceed 5% of the total amount of required insurance in each category. Should any policy contain any unusual exclusions, said exclusions shall be so indicated on the certificate(s) of insurance.
- 4.3 CONTRACTOR shall furnish AUTHORITY **Certificates of Insurance**, which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** after written notice has been given to the AUTHORITY. CONTRACTOR shall include AUTHORITY as an

Additional Insured on the General Liability and Automobile Liability insurance policy required by this Agreement. All of CONTRACTOR'S subcontractors shall be required to include AUTHORITY and CONTRACTOR as **Additional Insureds** on all of their liability insurance policies.

- 4.4 CONTRACTOR shall ensure that CONTRACTOR's naming of the AUTHORITY as an additional insured on its General Liability and Automobile Liability insurance policies pursuant to this Agreement shall afford coverage for the negligent, reckless, intentionally wrongful or willful acts of CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement.
- 4.5 In the event that subcontractors used by the CONTRACTOR do not have insurance, or do not meet the required insurance limits herein, CONTRACTOR shall indemnify and hold harmless the AUTHORITY for any claim(s) in excess of the subcontractor's insurance coverage.
- 4.6 The CONTRACTOR shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

- 5.1 The CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the Services performed pursuant to this Agreement as is ordinarily provided by comparable, qualified professionals under similar circumstances. The CONTRACTOR shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.
- 5.2 The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONTRACTOR agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

The CONTRACTOR shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the Agreement.

6.3 SURVIVAL

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 - INDEPENDENT CONTRACTOR

- 7.1 The CONTRACTOR is, and shall be, in the performance of all work services and activities performed under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

- 7.2 The CONTRACTOR does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 8 - AUTHORITY TO CONDUCT BUSINESS

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all requirements in this Agreement.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the Services, the CONTRACTOR will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

ARTICLE 10 - SUB-CONTRACTING

- 10.1 The AUTHORITY reserves the right, in its sole and unfettered discretion, to accept the use of a subcontractor or to reject the selection of a particular subcontractor under this Agreement.
- 10.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

The AUTHORITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the AUTHORITY will provide an exemption certificate to CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the AUTHORITY, nor shall the CONTRACTOR be authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the AUTHORITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of the Solid Waste Authority of Palm Beach County.

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONTRACTOR, including existing reports, studies, financial information, and other required data that are available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

- 14.1 The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR: a) fails to satisfactorily perform any provisions of this Agreement; or b) fails to make progress so as to endanger performance under the terms and conditions of this Agreement; or c) repeatedly fails to perform; or d) does not remedy any such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONTRACTOR, the AUTHORITY may, in its sole and unfettered discretion, procure goods and/or services similar to those required under this Agreement and the CONTRACTOR shall be liable for any excess costs incurred due to this action.
- 14.2 If it is determined that the CONTRACTOR was not in default or that the default was excusable (e.g., failure

due to causes beyond the control of, or without the fault or negligence of the CONTRACTOR), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

- 15.1 The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate this Agreement, in whole or in part, for the convenience of the AUTHORITY. The Director of Purchasing Services shall give five (5) business days prior written Notice of Termination to the CONTRACTOR, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONTRACTOR has the right to withdraw, without adverse action by the AUTHORITY, from the entire Agreement.
- 15.2 Unless directed differently in the Notice of Termination, the CONTRACTOR shall incur no further obligations in connection with the terminated work and shall stop work to the extent specified on the date given in the Notice of Termination. Additionally, unless directed differently, the CONTRACTOR shall terminate outstanding orders and/or subcontracts related to the terminated work.
- 15.3 Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination specified in the Notice of Termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

- 16.1 Neither the AUTHORITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 17 – JURISDICTION, VENUE, WAIVER OF JURY TRIAL AND REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located exclusively in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial failure by any party to exercise any right, power, or remedy hereunder, shall preclude that party from exercising that right, power or remedy in the future. **THE AUTHORITY AND CONSULTANT FREELY AND VOLUNTARILY AGREE TO WAIVE ITS RESPECTIVE RIGHT TO A JURY TRIAL ON ANY ISSUE(S) SO TRIABLE.**

ARTICLE 18 – COMMERCIAL NON-DISCRIMINATION POLICY

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it will comply with the AUTHORITY's Commercial Non-Discrimination Policy, as described in Section 6.3 of the AUTHORITY's Purchasing

Manual, including subsequent amendments thereto, if any. As part of such compliance, the CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, gender, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONTRACTOR retaliate against any person for reporting instances of such discrimination. The CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the AUTHORITY's relevant marketplace in Palm Beach County. The CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the CONTRACTOR from participating in AUTHORITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The CONTRACTOR agrees and understands that the provisions of Section 6.3 of the AUTHORITY's Purchasing Manual are incorporated herein by reference and that the CONTRACTOR is familiar with the contents of same.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further or subsequent breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any further or subsequent default or breach.

ARTICLE 20 - SEVERABILITY

- 20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 20.2 The provisions of this section shall not prevent the entire Agreement from being void if a provision which is of the essence of the Agreement is determined to be void.

ARTICLE 21 - ENTIRETY OF AGREEMENT AND MODIFICATION

The AUTHORITY and the CONTRACTOR agree that this Agreement, including Exhibits and Attachments, and any matters incorporated by specific reference set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the AUTHORITY and CONTRACTOR pertaining to the services, whether written or oral. None of the provisions or terms and conditions contained in this Agreement may be added to, amended, modified, superseded or otherwise altered except by written instrument executed by the parties thereto.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONTRACTOR each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party and its partners, successors, executors, administrators, assigns and legal representative. CONTRACTOR shall not assign this Agreement without the prior express written approval of the AUTHORITY in its sole discretion via executed amendment.

ARTICLE 23 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - TRUTH-IN-NEGOTIATION CERTIFICATE

- 24.1 Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of the Agreement.
- 24.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 25 - OWNERSHIP OF DOCUMENTS

CONTRACTOR shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the AUTHORITY for its use and/or distribution as may be deemed appropriate by the AUTHORITY in its sole and unfettered discretion.

ARTICLE 26 - PUBLIC RECORDS, ACCESS AND AUDITS

- 26.1 It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.

26.2 DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

RECORDS MANAGER

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

7501 NORTH JOG ROAD

WEST PALM BEACH, FL 33412

561-640-4000 EXT. 4606

RECORDSCUSTODIAN@SWA.ORG

- 26.3 The CONTRACTOR shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>) after completion or termination of this Contract. Upon AUTHORITY'S request, CONTRACTOR shall provide AUTHORITY with access to such records during normal business hours at a location within Palm Beach County for purposes of inspection or audit.
- 26.4 Notwithstanding anything herein to the contrary, the CONTRACTOR expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Contract; ii) acting on behalf of the AUTHORITY in the performance of this Contract; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.
- 26.5 Any public records requests directed to, or related in any way to this contract shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager, they shall immediately notify the CONTRACTOR and the CONTRACTOR must provide the records or allow access to the records within a reasonable time. A CONTRACTOR who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.
- 26.6 Therefore, the CONTRACTOR is required to:
- 1) Keep and maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
 - 2) Upon AUTHORITY's request from the AUTHORITY's Records Manager; provide the AUTHORITY with a copy of the requested records to allow the records to be inspected or copied within a reasonable time on the same terms and conditions that the AUTHORITY would provide the records at a cost that does not exceed the cost provided by Florida law;
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the CONTRACTOR does not transfer the records to the AUTHORITY; and
 - 4) Upon completion of the Agreement, transfer at no cost to the AUTHORITY, all public records in possession of the CONTRACTOR or keep and maintain public records to the AUTHORITY upon completion or termination of the Agreement; the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the AUTHORITY, upon request from the AUTHORITY's Records Manager, either during performance of the Agreement or after termination or completion of the Agreement in a format that is compatible with the information technology systems of the AUTHORITY.
- 26.7 Failure of the CONTRACTOR to comply with these requirements shall be a material breach of this Contract.

26.8 CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency (FEMA) sub-grantee as required by 2 CFR 200.333. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.

26.9 In the event records retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with the State of Florida requirements.

ARTICLE 27 - INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

ARTICLE 28 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO AUTHORITY

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412

Attention: Executive Director
Office No.: 561-640-4000 Fax No.: 561-640-3400

AS TO CONTRACTOR

AshBritt, Inc.
565 E. Hillsboro Boulevard
Deerfield Beach, Florida 33441

Attention: Rob Ray, Senior Vice President
Office No.: 954-725-6992 Fax No.: 954-725-6991 E-Mail: rgray@ashbritt.com

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.;

printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and AUTHORITY.

ARTICLE 29 - CONTRACT ADMINISTRATION

Services of CONTRACTOR shall be under the general direction of the **Chief Operations Officer**, or designee, who shall act as the AUTHORITY'S representative during the term of the Agreement.

ARTICLE 30 - KEY PERSONNEL

CONTRACTOR shall notify AUTHORITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. AUTHORITY has the right to reject any proposed changes in key personnel. The following personnel shall be considered key personnel:

Rob Ray – Project Manager
Cell No.: 954-868-9502 E-Mail: r-ray@ashbritt.com

Brittany Perkins – Chief Executive Officer
Cell No.: 954-725-6992 E-Mail: response@ashbritt.com

Randall Perkins – Senior Operations Advisor
Cell No.: 954-725-6992 E-Mail: response@ashbritt.com

Brian Thomason – Operations Manager
Cell No.: 954-240-1110 E-Mail: bthomason@ashbritt.com

Matt Gierden – Quality Control Manager
Cell No.: 239-229-5829 E-Mail: matt@ashbritt.com

Dow Knight – Quality Control Manager
Cell No.: 954-818-4416 E-Mail: dow@ashbritt.com

Jason Fawcett – Operations Supervisor
Cell No.: 757-285-5456 E-Mail: jason@ashbritt.com

ARTICLE 31 – EQUAL BUSINESS OPPORTUNITY PROGRAM:

The Governing Board of the AUTHORITY has implemented the Economic Inclusion Policy administered by the Equal Business Opportunity (EBO) Program Office to ensure that all segments of its business population, including, but not limited to local, small, minority, and women-owned businesses, have an equitable opportunity to participate in the AUTHORITY'S procurement process, in accordance with Section 6.1 through 6.4 of the Purchasing Manual. Program tools and solicitation incentives are hereby referred to as the Affirmative Procurement Initiatives (API).

31.1 Affirmative Procurement Initiative (API):

The AUTHORITY has NOT applied an Affirmative Procurement Initiative to this Agreement.

ARTICLE 32 - SCRUTINIZED COMPANIES

- 32.1 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

- 32.2 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, this Agreement certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

ARTICLE 33 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

- 33.1 The CONTRACTOR agrees that this Agreement constitutes an offer to all State and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONTRACTOR deem it in the best interest of their business to do so.

- 33.2 The Agreement in no way restricts or interferes with any State or local government agencies of the State of Florida from re-solicitation.

ARTICLE 34 – THIRD PARTY BENEFICIARY DISCLAIMER

It is not the intention of these documents to create third party beneficiary status in any person or entity that is not a direct party to this Agreement, and no language in this Agreement should be construed or interpreted as creating a third party beneficiary.

ARTICLE 35 – E-VERIFY – EMPLOYMENT ELIGIBILITY

- 35.1 The CONTRACTOR certifies, warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended and that CONTRACTOR shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the CONTRACTOR'S subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

- 35.2 AUTHORITY shall terminate this Agreement if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If AUTHORITY has a good faith belief that one of CONTRACTOR'S subcontractor(s) has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, AUTHORITY shall notify CONTRACTOR to terminate its contract with the subcontractor and

CONTRACTOR shall immediately terminate its contract with the subcontractor. If AUTHORITY terminates this Agreement pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by AUTHORITY for a period of one (1) year from the date on which the Agreement was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by AUTHORITY as a result of the termination.

ARTICLE 36 – CONFIDENTIALITY

No reports, information, computer programs, documentation, and/or data given to, or prepared or assembled by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the AUTHORITY.

ARTICLE 37 – PAYMENT ADJUSTMENT SCHEDULE

37.1 The AUTHORITY acknowledges the fluctuating nature of prices.

37.2 Annual Non-Fuel: The Non-Fuel Adjustment shall be applied to those rates subject to adjustment and as provided within this Agreement. For the purpose of this Agreement, the Non-Fuel component is assumed to represent 90% of the CONTRACTOR's costs. Therefore, 90% of the approved rates shall be so adjusted:

The rates shall be adjusted as follows:

The rates shall be adjusted annually, commencing on the first anniversary date, by the change in the Water and Sewer and Trash Collection Services Index, Series ID CUSR0000SEHG, as published by the United States Department of Labor, Bureau of Labor Statistics ([jwww.bls.gov](http://www.bls.gov)). The change in the index shall be calculated by dividing the average of the index over the twelve-month period ending the December preceding the effective date of the adjustment (January – December 2022) by the average of the index over the twelve-month period from January 2021 through December 2021. The first Annual Non-Fuel adjustment shall be effective May 7, 2023 to May 6, 2024.

For example:

For the Contract year beginning May 7, 2023, the average of the index over the twelve-month period from January 2022 through December 2022 shall be divided by the average of the index over the twelve-month period from January 2021 through December 2021, multiplying the result by ninety (90) percent of the contract or AUTHORITY established price, and subtracting ninety (90) percent of the contract or AUTHORITY established price.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most Recent Year Average / Prior Year Average x .90 x Rate – (.90 x Rate) = Annual Adjustment

Calendar:

Annual Payment Adjustment Calendar

April 2023	April 2024
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Extension Clause Annual Payment Adjustment Schedule

April 2025	April 2026	April 2027
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37.3 **Activation Fuel Adjustment (Fuel Surcharge/Credit)**

The rates subject to adjustment shall be subject to a fuel price surcharge/credit for fluctuations in the price of fuel. For the purpose of this Agreement, fuel is assumed to represent 10% of the Contractor's costs therefore 10% of the approved rates shall be so adjusted. Fuel adjustment shall be calculated and effective upon activation.

The rates shall be adjusted as follows:

For the rates subject to adjustment, a fuel surcharge/credit shall be charged/credited basis based on the percentage change in the average price of fuel as published by the Oil Price Information Service (OPIS) and measured by the OPIS Standard Rack, OPIS No. 2 Distillate Gross Prices, Unbranded Average for Miami, Florida between the month of **January 2022 (Base)** and the most recent month available upon activation.

Fuel Adjustment does not use a floor or ceiling and provides adjustments in either direction without limit.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most recent OPIS (at activation) / Base x .10 x Rate – (.10 x Rate) = Fuel Adjustment (for duration of activation)

For example:

Should activation occur October 2023, the fuel surcharge/credit shall be calculated by dividing the reported unbranded average price for September 2023 by the Base (unbranded average price for January 2022), multiplying the result by ten (10) percent of the contract or Authority established price, and subtracting ten (10) percent of the contract or Authority established price.

- 37.4 In the event that either of these indices is no longer available, the parties shall mutually agree to a replacement index. The value of the adjustment will be determined by the AUTHORITY.

ARTICLE 38 – ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

The CONTRACTOR has entered into a contingent Agreement with the AUTHORITY for Hurricane/Disaster Debris Removal, Reduction, and Disposal. The Agreement awarded will be activated on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY may activate, assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action as it determines in its sole and unfettered discretion.

ARTICLE 39 – TASK ORDER/PERFORMANCE

Task Orders shall be executed bilaterally, and the scope of services and format of Task Orders shall be mutually agreed to by the CONTRACTOR and AUTHORITY. Performance will be measured by the metrics established in each Task Order. After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide a written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR default or underperformance by any means it deems in its best interest. CONTRACTOR will be required to provide a daily report of quantity of work performed under each Task Order. The daily report shall be submitted by 11:00 a.m. or earlier the following morning.

ARTICLE 40 – BONDS

CONTRACTOR shall maintain a Proposal Bond in the sum of \$500,000. The CONTRACTOR's Proposal Bond will be returned to the CONTRACTOR in exchange for and acceptance of an appropriate size bond as determined by the AUTHORITY after assessment of damage and definition of the CONTRACTOR's scope of service. In case of hurricane caused damage, a Category 1 storm would require a \$2,000,000 Bond, a Category II would require a \$4,000,000 Bond, a Category III would require a \$6,000,000 Bond, a Category IV would require an \$8,000,000 Bond, and a Category V would require a \$10,000,000 Bond. The Bond required would be a Performance and Payment Bond, Attachment G. The cost of the Bond is included in the unit rates in the Fee Schedule, Exhibit B. The CONTRACTOR shall maintain the Proposal Bond in effect until the Performance and Payment Bond is submitted to and accepted by the AUTHORITY. If the CONTRACTOR fails to supply a Performance and Payment Bond, the AUTHORITY shall be entitled to retain the Proposal Bond to rectify the CONTRACTOR's unacceptable performance. Pending successful annual CONTRACTOR recertification, the Proposal Bond shall be in effect for the entire term of the Agreement, except for period(s) of time when a Performance and Payment Bond is in effect.

ARTICLE 41 – FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273

- 41.1 This Agreement incorporates all of the provisions set forth in the document commonly known as FHWA Form 1273, Attachment E, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor" as used in Attachment E shall apply to and mean the CONTRACTOR who may be referred to in Attachment E as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONTRACTOR will perform the duties and obligations of the other contracting party regardless of the description or label used in Form 1273, Attachment E.
- 41.2 The CONTRACTOR shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or "linked" to a particular Federal Highway. Wage rate tables may be found at <http://www.dot.state.fl.us/construction/wage.shtm>. Said wage rate tables are incorporated into and made part of this Agreement by reference.

ARTICLE 42 – BUY AMERICA REQUIREMENTS

The CONTRACTOR agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), as they may be amended from time to time) as they relate to Federal-aid contracts and the use of steel and iron produced in the United States. A description of the requirements of Buy America is set forth in ATTACHMENT "F", which is attached hereto and incorporated by reference as part of this Agreement. CONTRACTOR shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, and FEMA, to the extent applicable.

ARTICLE 43 – DISADVANTAGED BUSINESS ENTERPRISES

- 43.1 This provision shall supplement Article 31 "Equal Business Opportunity Program" of the Agreement. The Agreement is subject to the requirements of 49 CFR Part 26. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13). Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.

- 43.2 The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.
- 43.3 The CONTRACTOR shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONTRACTOR shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation's (FDOT) website found at www.bipincwebapps.com/bizwebflorida/. Audits may be conducted to review payments to DBE subcontractors. The CONTRACTOR will fully cooperate with the AUTHORITY, FDOT, or FEMA regarding the monitoring of subcontractors and payments made thereto.

ARTICLE 44 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

- 44.1 This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONTRACTOR shall verify that neither the CONTRACTOR, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.
- 44.2 The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONTRACTOR must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. CONTRACTOR's certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 45 – ACCESS TO RECORDS AND THEIR RETENTION

- 45.1 This provision shall supplement Article 26 of this Agreement. The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONTRACTOR agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.
- 45.2 The CONTRACTOR shall make all of its books, records, and other documents related, in any manner to its or its subcontractors' performance of the Agreement, available to the AUTHORITY and any other funding entity (e.g. FDOT, FEMA, the Comptroller General of the U.S. or any of their authorized representatives) for the purpose of examination, audit, reproduction, excerpts and transcripts, during normal business hours, at the CONTRACTOR's place of business or if CONTRACTOR's place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONTRACTOR shall also require its subcontractors to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONTRACTOR.

ARTICLE 46 – AUDIT REQUIREMENTS

This provision shall supplement Article 26 of this Agreement. The CONTRACTOR agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONTRACTOR agrees that it will comply, execute any necessary documents and fully cooperate with the AUTHORITY and any State and/or Federal funding agency(ies), including but not limited to FDOT, Florida's Auditor General, FEMA, or any of their authorized representatives, in any audit or monitoring procedures or processes any such entity(ies) may undertake related to CONTRACTOR's performance of the Agreement in order to properly and satisfactorily complete the audit, if any.

ARTICLE 47 – NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONTRACTOR shall cooperate with the AUTHORITY, FDOT, and FEMA so as to assure that all activities related to the performance of this Agreement comply with the requirements of the National NEPA of 1969, as amended, and the regulations and guidance related thereto.

ARTICLE 48 – AMERICANS WITH DISABILITIES ACT

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act of 1990 (42 USC 12102, et seq.), as it may be amended, and all applicable impending regulations of the U.S. DOT, FEMA, and other Federal-aid agencies.

ARTICLE 49 – COMPLIANCE WITH TITLE VI, TITLE VII, AND OTHER FEDERAL LAWS AND REGULATIONS

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 USC 2000d et. Seq. and 3601 et seq.) and the Age Discrimination and Employment Act of 1967 and Section 303 of the Age Discrimination Act of 1975, as amended (42 USC 6102), and all applicable Federal laws and regulations, policies, procedures, and directives of the U.S.DOT, FEMA and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

ARTICLE 50 – CONVICT LABOR PROHIBITION

The CONTRACTOR does hereby represent and certify that it will comply with the convict labor prohibition in 23 U.S.C. 114, and all implementing regulations thereto.

ARTICLE 51 – CERTIFICATION REGARDING LOBBYING ACTIVITIES

A Bidder or Proposer for an award of certain Federal-Aid contracts in the amount of \$100,000 or more, must file the certification required by 49 CFR Part 2. The CONTRACTOR confirms that by signing and submitting a Bid or Proposal for the work covered by this Agreement, it made the certification described in Section X1 of the Attachment F herein.

ARTICLE 52 – DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

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

ARTICLE 53 – NO OBLIGATION BY FEDERAL GOVERNMENT

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

ARTICLE 54 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

In Witness Whereof, AUTHORITY, and CONTRACTOR have made and executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

WITNESS:

1.

2.

By:

Daniel Pellowitz
Executive Director

(SEAL)

APPROVED AS TO LEGAL SUFFICIENCY:

Howard J. Falcon III
By: 
Howard J. Falcon, III
General Counsel

APPROVED AS TO TERMS AND CONDITIONS:


Signature
Patrick D. Carroll
Print Name
CWO
Title

ATTEST:


Christine Brundage
Corporate Secretary Treasurer

ASHBRITT, INC.:


Dow Knight
Authorized Signature

WITNESS:

1.

2.

Jackie Ryan
Jackie Ryan
Matt Gierden

Dow Knight
Print Name
Corporate Secretary and Senior Vice President
Title
04/28/2022
Date

(Affix Corporate Seal)

Approved by Authority Board on April 13, 2022, Item No.: 9. C.1

SCOPE OF WORK

1. PROJECT DESCRIPTION AND REQUIREMENTS:

- A. The AUTHORITY seeks CONTRACTOR to remove and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible garbage) from public property and public rights-of-way, and to setup and operate Temporary Debris Management Site(s) (TDMS) in Palm Beach County, Florida, immediately after a hurricane or other disaster.
- B. The objective of this RFP and subsequent contracting activity is to secure the services of the CONTRACTOR who is capable of efficiently removing large volumes of disaster-generated debris from a large area in a safe, timely and cost-effective manner and lawfully disposing of all debris. CONTRACTOR must be capable of assembling, directing, and managing a work force that can complete the debris management operations in 120 days or less. The duration of effort/completion dates of all tasks will be determined jointly by the AUTHORITY and CONTRACTOR. This determination will be set in writing in appropriate Task Order(s).
- C. The CONTRACTOR shall perform all work in strict accordance with Federal Emergency Management Agency (FEMA) guidelines in order to maximize recovery of reimbursable expenses. This task shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished.
- D. The CONTRACTOR may be required, at the AUTHORITY'S discretion, to be under the direction of an agent of the AUTHORITY.
- E. While intended to cover debris management needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to Palm Beach County, Florida. The planning standards used for this project are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida. The AUTHORITY intends to enter into contingency Agreement(s) as further defined herein, to provide emergency debris removal and disposal services as required by the AUTHORITY.

2. INTRODUCTION:

- A. The AUTHORITY'S disaster recovery planning includes considerations for removing and processing the volumes and types of debris expected to be generated by a major disaster such as a hurricane or major flood and includes procedures for disposing of that debris. The planning approach is formulated in part on the concept of strategic pre-positioning of plans and resources necessary for timely, safe, coordinated recovery operations, including removal of debris from public property and rights-of-way throughout Palm Beach County using a combination of county, municipal, and CONTRACTOR forces.
- B. If activation is required, the AUTHORITY intends to activate contracts on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY intends to activate the CONTRACTORS in the order of final ranking as best meets the needs of the AUTHORITY. The AUTHORITY reserves the right in its sole and unfettered discretion, to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action.

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- C. The AUTHORITY envisions the need for four (4) CONTRACTORS to carry out the debris removal and disposal work throughout Palm Beach County. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and to cover the expenses associated with a major recovery operation prior to the initial AUTHORITY payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel, comprehensive debris removal, volume reduction operations plan, and demonstrable experience in major disaster recovery projects.
- D. The Agreement(s) to be awarded under this RFP will be contingency Agreement(s) that will be activated only in the face of an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until the Agreement is activated either in anticipation of a natural disaster or immediately after such disaster.
- E. The CONTRACTOR who receives an Agreement for the work, will be required to participate in certain AUTHORITY directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the AUTHORITY.
- F. The AUTHORITY does not guarantee a CONTRACTOR will be activated if awarded an Agreement.

3. PLANNING STANDARD FOR DEBRIS REMOVAL AND DISPOSAL:

The AUTHORITY'S goal is to complete the debris removal and disposal process in 120 days following the storm event. This assumes that the entire area of the county will be accessible within that period. Due to the low elevation and potential for flooding, some areas might not be accessible for several weeks after a major natural disaster. The CONTRACTOR must be aware that it might not be possible to initiate operations in all parts of the county simultaneously immediately after a storm.

4. DEBRIS MANAGEMENT:

- A. Planning for debris management operations is a function of the AUTHORITY as a supporting agency to the Palm Beach County Department of Engineering and Public Works. The AUTHORITY'S Emergency Management Coordinator will direct the debris removal and disposal operations.
- B. In addition to using AUTHORITY forces and equipment, the AUTHORITY intends to execute four (4) debris removal and disposal Agreements on a contingency basis for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the AUTHORITY in the aftermath of a major disaster. Each CONTRACTOR holding a debris removal and disposal Agreement will serve as a General CONTRACTOR for the purpose of debris removal and disposal operations and will be able to use his/her own and subcontractor resources to meet the obligations of the Agreement. It is anticipated, but not required, that the CONTRACTOR will use both local and non-local subcontractors.
- C. When a major disaster occurs or is imminent, the AUTHORITY intends to contact the highest two (2) or three (3) ranked CONTRACTORS holding debris removal and disposal Agreements to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will

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generally be limited to debris in, upon, or brought to county residential private and public streets and roads, rights-of-way, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations. Disposal of debris will be at AUTHORITY approved TDMS or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all TDMS.

- D. When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order, to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane or major flood. Depending on the nature of the storm and circumstances, the AUTHORITY may activate more than one (1) CONTRACTOR. CONTRACTOR(S) will generally be activated in order of final ranking.
- E. Specific task orders will be issued to select CONTRACTORS based on the best interest of Palm Beach County. The AUTHORITY reserves the right to assign work or task orders to various CONTRACTORS based on capability. The AUTHORITY does not guarantee a cradle to grave pricing arrangement but reserves the right to pick and choose CONTRACTORS based on ranking.
- F. The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.
- G. The AUTHORITY will make every effort to identify strategically located public and private TDMS throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional public and private TDMS will be identified as needed.
- H. The CONTRACTOR will operate the public and private TDMS and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate TDMS. The CONTRACTOR is responsible for all activity at TDMS operated by their subcontractor and must have an employee on site at all times to oversee daily operations. **The locations of both publicly and privately owned sites currently under consideration are shown on Attachment B.** Additional public and privately owned TDMS may become available as plans develop. The availability of both private and public TDMS may change during the term of the Agreement.
- I. The AUTHORITY may also establish designated homeowner drop-off sites on a public right-a-way (PROW) for communities. The CONTRACTOR will be responsible for removing all eligible debris from those approved designated locations at the direction of the Emergency Management

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Coordinator or designee.

- J. Curbside segregation of debris and disaster-generated or related wastes will be an element of the AUTHORITY'S disaster recovery program. The debris removal and disposal CONTRACTOR will be required to aid in the segregation and waste stream management processes. Any Household Hazardous Waste (HHW) encountered by the debris removal CONTRACTOR is to be set aside. HHW disposal will be the responsibility of the resident. The AUTHORITY will designate HHW drop-off locations.
- K. The following items are considered HHW for the purpose of this Agreement:
 - 1. Used Oil
 - 2. Batteries
 - 3. Paint
 - 4. Aerosol spray cans
 - 5. Pesticides
 - 6. Antifreeze
 - 7. Fluorescent light bulbs
 - 8. Propane tanks (household size)
- L. The CONTRACTOR will setup a lined containment area and separate any HHW inadvertently delivered to a TDMS.
- M. Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will be set aside for collection and disposal by a Hazardous Materials Removal and Disposal Contractor who will be selected by the AUTHORITY.
- N. Putrescible residential garbage will be collected by AUTHORITY franchise waste haulers and is not to be collected or transported by CONTRACTOR forces. The AUTHORITY may enter into a separate emergency debris removal agreements with each franchise hauler to operate their dedicated self-loading collection equipment within their Service Area for FEMA eligible storm debris removal.

5. SCOPE OF WORK/OVERVIEW:

This section is divided into three (3) subsections:

- 5.1 Debris Removal and Disposal Operations** from residential public and private streets, roads and rights-of-way and delivered to a TDMS designated by the Authority.
- 5.2 TDMS Operations** which includes daily operations as well as reclamation of the site to its pre-storm condition or as directed by the AUTHORITY Emergency Management Coordinator
- 5.3 Processing, Loading and Hauling Material** from TDMS to final destination.
 - A. Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, timeframe for completion, rates to be used, etc. Any job with requirements or rates not covered by

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this Proposal will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest at the CONTRACTOR'S expense.

- B. The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.
- C. The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.
- D. The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY's Director, Customer Information Services prior to issuance of the first Task Order.
- E. The quantity of work required to complete the Agreement resulted from this RFP is estimated. The actual effort required may be more or less than the estimated amount shown in the Proposal Form 3 – Price Proposal. Payment will be made at the unit rates proposed. The output will be verified by the AUTHORITY's Director, Customer Services in the daily operational report. Should hourly rates be used to pay for certain equipment other than preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.
- F. The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no additional cost to the AUTHORITY.

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- G. The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- H. The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

6. DEBRIS REMOVAL AND DISPOSAL OPERATIONS

6.1 General:

- A. The purpose of this section is to define the requirements for debris removal and disposal operations after any catastrophic disaster within Palm Beach County. The AUTHORITY may designate zones for collection and disposal locations for debris collected. CONTRACTORS will be tasked with a service area(s) for this specific work immediately after the activation of the Agreement.
- B. For work performed on a Time and Materials basis, all hourly equipment rates shall include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, and all other costs associated with the equipment including labor and operator.

6.2 Services:

- A. The CONTRACTOR shall provide equipment, operators, and laborers for debris removal operations. The CONTRACTOR shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, and repairs) all equipment under this Agreement.
- B. All rates are to include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and all other costs.
- C. The work shall consist of clearing and removing disaster generated debris as directed by the AUTHORITY Emergency Management Coordinator. CONTRACTOR shall provide collection equipment the day following a natural disaster or as directed by the AUTHORITY and shall provide equipment sufficient to collect a minimum of 50,000 cubic yards of debris per day within ten (10) calendar days of collection commencement (Past AUTHORITY natural disaster cleanup records show that ten (10) days' following disaster, 95,000-126,000 cubic yards of debris collected per day). Failure to provide sufficient equipment necessary to collect required amount may result in the AUTHORITY entering into a separate agreement with another contractor for collection services.

6.2.1 Removal of Hazardous Leaning Trees and Hanging Limbs

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous trees twelve inches (12") or greater in diameter, measured three feet (3') from the base of the tree

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or chest height and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way. Further, debris generated from the removal of hazardous trees and hanging limbs two inches (2") or greater existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Hazardous leaning trees less than twelve inches (12") in diameter, measured three feet (3') from the base of the tree or at chest height, will be flush cut, and placed on the public right-of-way to be removed as vegetative debris. The AUTHORITY will not compensate the CONTRACTOR for leaning trees less than twelve inches (12") in diameter on a unit rate basis.

- b) Removal and transportation of hazardous trees twelve inches (12") or greater in diameter and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of leaning trees will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for leaning or hazardous trees to be removed and eligible for reimbursement, the tree must satisfy a minimum of one (1) of the following requirements:
 - i) The tree is leaning in excess of 30° degrees in a direction that poses an immediate threat to public health, welfare, and safety.
 - ii) The tree is dead, twisted, or mangled as a direct result of the storm and a certified arborist can attest to the fact that the tree will die and potentially create a falling hazard to the public.

6.2.2 Removal of Hazardous Stumps

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous uprooted stumps 24 inches or greater in diameter, measured 24 inches from the base of the tree existing in private and public right-of-way. Further, debris generated from the removal of uprooted stumps existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Stumps measured 24 inches from the base of the tree and less than 24 inches in diameter will be considered normal vegetative debris and removed in accordance with 3.1.2. The AUTHORITY will not compensate hazardous stumps less than 24 inches in diameter on a unit rate basis and instead will be considered normal vegetative debris. The diameter of stumps less than 24 inches will be converted into a cubic yardage volume based on the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines) and removed under the terms and conditions of 2.6.2.
- b) Removal and transportation of hazardous uprooted stumps existing in the private and public right-of-way and private property will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of hazardous stumps will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for hazardous stumps to be removed and eligible for reimbursement, the stump must satisfy the following requirement:

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- (i) Over 50% of the tree crown is damaged or broken and heartwood is exposed.
- (ii) Tree stumps that are not attached to the ground will be considered normal vegetative debris and subject to removal under the terms and conditions of 2.1. The cubic yard volume of the unattached stump will be based off of the diameter conversion using the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines).

The AUTHORITY or its representative will measure and certify all stumps before removal.

6.2.3 Collection of Storm Generated Residential Vegetation and Construction and Demolition Debris:

- a) It is the AUTHORITY'S goal to ensure that Vegetation and Construction/Demolition debris remain separate task orders for the collection of Vegetation and Construction loads. Mixing of loads by the CONTRACTOR at the road right of way will not be tolerated.

Work may include:

- (i) First pass to clear debris from emergency evacuation routes, access roads to critical facilities and all primary roadways.
 - (ii) Clearing debris from residential private and public road right of ways.
 - (iii) Loading the debris.
 - (iv) Hauling the debris to an approved AUTHORITY TDMS or an authorized private construction demolition debris recycling facility or landfill.
 - (v) Dumping the debris at the TDMS or direct haul to an Authority permitted approved private Construction and Demolition Debris (C&D) recycling facility or Authority authorized landfill.
- b) Debris delivered to a TDMS, private C&D recycling facility or authorized landfill will be paid based on the per cubic yard price according to the Proposal Form 3 – Price Proposal.

6.2.4 Hourly Rate Clearing:

- a) From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:
 - (i) Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.
 - (ii) Perform emergency removal of debris if needed for life-saving measures.
 - (iii) Conduct daily briefings with debris managers and other officials to update progress and discuss issues.
 - (iv) Develop a traffic control plan along potential haul routes and at debris management and disposal sites.

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- b) The CONTRACTOR shall not move from one designated Collection Zone to another area without prior approval from the AUTHORITY's Director, Customer Information Services or designee. CONTRACTORS and/or subcontractors that move to a designated Collection Service Area without prior AUTHORITY approval may be terminated immediately. The AUTHORITY reserves the right to relocate CONTRACTOR to other Collection Service Areas based on need and ability to perform required work at an acceptable level. The AUTHORITY reserves the right to immediately terminate CONTRACTOR and any subcontractor who fails to provide service in strict accordance with guidelines set forth by FEMA and the AUTHORITY.
- c) The AUTHORITY or designee shall forward all claims of damage to the CONTRACTOR daily. CONTRACTOR shall provide all contact information, including name, phone number, cellular phone number, fax number and email address, for personnel responsible for resolving all claims of damage. CONTRACTOR must respond to all claims of damage within 24 hours and resolve within ten (10) calendar days. Mailboxes must be repaired or replaced within two (2) calendar days. CONTRACTOR is responsible for all damage caused by his crew and/or subcontractors in the performance of debris removal.
- d) In the event the CONTRACTOR fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided in this Agreement, the AUTHORITY or designee may arrange for the repairs and assess the CONTRACTOR for the cost of the repairs and any applicable administrative charges. Any disputes as to damage responsibility will be presented to the Director, Customer Information Services or designee for review. The decision of the Director, Customer Information Services or designee will be final.

6.3 Equipment:

- A. All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:
 - 1. Fencing must be permanently attached to one side of the truck bed.
 - 2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
 - 3. Fencing must extend to the bottom of the bed.
 - 4. After loading, bottom of fencing shall be tight against the bed of the truck and secured at a minimum of two locations.
 - 5. Solid iron metal bars must be secured to both sides of the fencing.
 - 6. There shall be no hand loaded equipment allowed.
- B. The AUTHORITY or designee shall complete certifications indicating the type of vehicle, make and model, license plate number, equipment number, and measured maximum

EXHIBIT "A"

volume, in cubic yards, of the load bed of each piece of equipment utilized to haul debris. The measured volume of each piece of equipment shall be calculated from actual internal physical measurement performed and certified by the CONTRACTOR. Maximum volumes may be rounded up to the nearest cubic yard. The reported measured maximum volume of any load bed shall be the same as shown on the placards affixed to each piece of equipment. The AUTHORITY reserves the right to re-measure trucks and trailers at any time to verify reported capacity. If a truck and/or trailer are re-measured and the yardage capacity is determined to be lower, the lower yardage volume will be retroactive to the initial load and total volume adjusted accordingly.

- C. All trucks and trailers utilized in hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. If installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and remarked. All extensions to the bed are subject to acceptance or rejection at the sole discretion of the AUTHORITY or designee.
- D. Trucks or equipment designated for use under this Agreement shall not be used for any other work during working hours. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement. Under no circumstance will the CONTRACTOR mix debris hauled for others with debris hauled under this Agreement. Failure to comply will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to provide any additional emergency debris collection services. Any and all unapproved changes to placard will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to perform any additional emergency debris collection services.

6.4 Securing Debris

The CONTRACTOR shall be responsible for properly and adequately securing debris on each piece of equipment utilized to haul debris. Prior to leaving the loading site, the CONTRACTOR shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted during loading and secured during transport. Tarps or other coverings shall be provided by the CONTRACTOR to prevent materials from falling or being blown from the bed. Loads not properly tarped or otherwise covered will not be allowed to dispose at any AUTHORITY approved TDMS which may result in non-payment to CONTRACTOR.

6.5 Equipment Signage

Prior to commencing operations, the AUTHORITY or designee shall affix to each piece of equipment, signs or markings indicating the Owner Operator's name and a unique equipment identification number. One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Each operator shall keep AUTHORITY certification with them at all times. Placards must remain on both sides of equipment.

6.6 Other Considerations

- A. The CONTRACTOR shall assign and provide an Operations Manager (OM) to the AUTHORITY TDMS to serve as the principal liaison between the AUTHORITY Director, Customer Services or designee and the CONTRACTOR'S forces. The assigned OM must be knowledgeable of all facets of the CONTRACTOR'S operations and have authority in writing to commit the CONTRACTOR. The OM shall be on call 24 hours per day, seven (7) days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for onsite accommodations. This linkage shall provide immediate contact via cell phone, Fax machine, and have Internet capabilities. The OM will participate in daily meetings and disaster exercises, functioning as a source to provide essential element information. The OM will report to the AUTHORITY Director, Customer Services or designee. This position will not require constant presence; rather the OM will be required to be physically capable of responding to the AUTHORITY Emergency Management Coordinator within 30 minutes of notification.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.
- C. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- D. Payment for debris hauled will be based on the quantity of debris hauled in cubic yards. Debris hauled to a TDMS will require a validated load ticket. Drivers will be given an electronic load tickets at the loading site by an AUTHORITY loading site monitor. The quantity of debris hauled will be estimated in cubic yards at the TDMS by an AUTHORITY TDMS monitor. The estimated quantity will be recorded on the electronic load ticket. The AUTHORITY TDMS monitor will retain one copy of the paper load ticket and the driver will retain the remaining copies of the load ticket. Debris being hauled to a permanent landfill will be paid based on cubic yards recorded on an approved electronic or paper load ticket. Payment will be made against the CONTRACTOR'S invoice once site monitor and CONTRACTOR load tickets and/or scale tickets match. Load tickets not properly completed and signed will not be paid.

7. TEMPORARY DEBRIS MANAGEMENT SITES (TDMS) OPERATIONS**7.1 General**

- A. The purpose of this section is to define the requirements for TDMS Operations after any catastrophic disaster within Palm Beach County.
- B. The CONTRACTOR shall use only TDMS designated by the AUTHORITY Emergency Management Coordinator.

EXHIBIT "A"

- C. The TDMS foreman shall direct all vehicular traffic and load drop-off operations. Different types of debris shall be kept in separate piles at the TDMS. At a minimum, one flag person shall be posted at each TDMS for traffic control and to direct unmixed loads to proper location (by debris type) to be offloaded. CONTRACTOR shall be responsible for sorting and proper placement of all loads not dumped in appropriate location which results in mixing the once separated debris at no charge to the AUTHORITY.
- D. The CONTRACTOR shall begin grinding vegetative debris within five (5) calendar days of TDMS opening date and removing mulch/wood chips within ten (10) calendar days of site opening date. It is very important your plan provides specific information for the final disposal destination location of the mulch / wood chips removed from the public or private TDMS. The CONTRACTOR shall begin removal of Construction and Demolition/mixed debris from TDMS to an approved final destination within five (5) days of site opening date.

7.2 TDMS Services

7.2.1 Site Setup/Preparation and Site Closeout/Restoration Site setup/preparation and site closeout/restoration shall be compensated on a time and materials basis in accordance with the hourly rates provided in the Proposal Form 3 – Price Proposal. Site set-up/preparation/closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, limerock or crushed concrete access roads, seeding, and any other similar activity necessary to make the site usable for its intended purposes and to return the site to its original condition. Do not include any materials in calculating the hourly rates in the Proposal Form 3 - Price Proposal. Important- Phase I TDMS Reclamation is included in the 2.0 cubic yard price. Phase I Reclamation requires the contractor to remove all debris from the TDMS including small particles mixed with soil and grading the entire area. The only site closeout cost will be removal of road base material and seeding as approved by the Authority.

7.2.2 TDMS Operations and Material Processing

- a. TDMS operations and material processing shall be compensated in accordance with the unit prices provided in the Proposal Form 3 - Price Proposal. The CONTRACTOR shall provide equipment, operators, and laborers for TDMS operations as specified by Task Order. Unit prices provided in the Proposal Form 3 - Price Proposal, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance) all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each TDMS. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm

EXHIBIT "A"

identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the TDMS. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and any other costs. The work shall consist of managing the operations of a TDMS and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator

- b. The AUTHORITY plans to use two types of TDMS.
 - 1. Vegetative TDMS will be devoted to the reduction of clean woody debris by either burning or grinding. The AUTHORITY expects the material to be recycled and or beneficially re-used if processed by grinding. It is important to provide a detailed plan on how this material will be recycled or beneficially reused after grinding / reduction.
 - 2. Depending upon the size and type of devastation the AUTHORITY may require a separate Construction & Demolition (C&D) staging area, mixed debris staging area and a separate Household Hazardous Waste staging area. The AUTHORITY requests that PROPOSER implements recycling and or reduction programs to minimize the quantity of construction debris material to be land filled.
- c. Material coming into the Vegetative or C&D TDMS will be measured and paid for by the cubic yard according to the Proposal Form 3 – Price Proposal. Material removed and transported from a C&D TDMS will be measured and paid by the cubic yard according to the Proposal Form 3 – Price Proposal.
- d. Locations of all TDMS will be approved by the AUTHORITY. The AUTHORITY Emergency Management Coordinator must approve site improvements before work begins and any costs, other than those in the Proposal Form 3 – Price Proposal, that might have been negotiated under a Task Order shall be documented for payment.
- e. Material processed at a TDMS by either grinding or burning will be measured using cubic yards from incoming load tickets. Material entering a TDMS will be deposited in manageable piles.

7.3 Reporting

The CONTRACTOR shall submit a report to the AUTHORITY Emergency Management Coordinator or designee by close of business each day of the term of the Task Order. Each report shall contain, at a minimum, the following information:

- 1. Contractor's Name
- 2. Contract Number

EXHIBIT "A"

3. Daily and cumulative hours for each piece of equipment, *if appropriate*
4. Daily and cumulative hours for personnel, by position, *if appropriate*
5. Volumes of debris handled

Failure to provide audit quality information by 5:00 p.m. of the following day of operation will subject CONTRACTOR to non-payment in each instance at the sole discretion of the AUTHORITY.

7.4 Other Considerations

- A. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. In the event a TDMS must be closed due to CONTRACTOR equipment or operational failures, CONTRACTOR shall be liable for liquidated damages in the amount of \$25,000.00 per day for every day the site has to remain closed.

7.5 Debris Clearance (for access) from Right-of-Ways and Public Property

- A. The AUTHORITY provides support to Palm Beach County Government for Debris Management, including the clearance (moving debris from the middle of the road, etc.) of debris from right-of- ways and public property. Palm Beach County intends to perform debris clearance for access with its own forces or under existing contractual Agreements between the County and local firms. However, in a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner.
- B. This debris clearance is to be considered supplemental and optional service. It is anticipated that debris clearance activities would be conducted, if needed, on a time and material basis using the rates in the Proposal Form 3 – Price Proposal.

8. PROCESSING, LOADING AND HAULING MATERIAL:

CONTRACTOR shall provide all necessary labor, material and equipment to process, load and haul wood chips from TDMS in Palm Beach County to final destination for disposal. CONTRACTOR shall provide all necessary labor, material and equipment to load and haul construction and demolition debris and/or mixed debris from TDMS as directed by the AUTHORITY. The AUTHORITY reserves the right to contract with other firms to process, load and haul wood chips and construction and/or mixed debris to a final destination as may best meet the needs of the AUTHORITY. All wood chips, construction and/or mixed debris shall be disposed of in accordance with all Local, State of Florida and Federal guidelines.

CONTRACTOR will provide detailed listing to the AUTHORITY of the following:

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch / reduced yard waste material generated at TDMS is disposed, to include

address/GPS location.

4. AUTHORITY will determine final private or public Construction/Demolition debris disposal/recycling facility.

9. MISCELLANEOUS REQUIREMENTS

9.1 TDMS Foreman

- A. The TDMS foreman must be an employee of the CONTRACTOR and is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety.
- B. The TDMS foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Services or designee.

9.2 TDMS Night Foreman

- A. The TDMS night foreman must be an employee of the CONTRACTOR and is responsible for managing all night operations approved by the AUTHORITY.
- B. The TDMS night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Information Services or designee.

9.3 TDMS Management Plan

- A. Once the TDMS is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.
- B. Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:
 1. Access to site
 2. Site preparation -clearing, erosion control, and grading
 3. Traffic control procedures
 4. Safety
 5. Segregation of debris
 6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
 7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
 8. Specific plan including and location for the final disposal destination of the mulch/wood chips generated at the public or private TDMS.

9.4 Inspection Tower

The CONTRACTOR shall construct an inspection tower at each TDMS within three (3) calendar days of natural disaster. The tower shall be constructed using pressure treated wood or steel scaffold. The floor elevation of the tower shall be 10-feet above the existing

EXHIBIT "A"

ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Inspection towers must provide a dry area for employees and meet all FEMA and OSHA requirements.

9.5 Grinding Operation

The CONTRACTOR shall have grinder(s) on site and in operation within five (5) calendar days following a natural disaster. Failure to provide sufficient grinding capacity to accommodate expected incoming volumes and allow site to operate in an efficient manner within five (5) calendar days shall result in liquidated damages of \$10,000 per day. There shall be no period longer than 24 hours in which grinding activity may stop due to equipment or operational failure. Failure to provide back-up equipment within 24 hours shall result in liquidated damages of \$2,000 per hour per approved hours of grinding operation per day until grinding activity resumes.

9.6 Household Hazardous Waste Containment Area

The CONTRACTOR shall construct a hazardous material containment area at each TDMS. The area shall be 30' x 30'. The perimeter shall be lined with hay bales and staked in place. The area shall be lined with a heavy gage plastic to provide a waterproof barrier. Additional plastic sufficient to cover the area is required to prevent rain from entering the containment area. Site run-off must be redirected from the containment area by site grading.

10. PERFORMANCE OF CONTRACTOR

- A. It is the intent of this Agreement to ensure that the CONTRACTOR provides a timely quality level of services. To this end, all complaints received by the Emergency Management Coordinator or designee and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.
- B. The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:
 - 1. Failure to open pre-storm identified sites within three (3) calendar days of after being tasked by the AUTHORITY liquidated damages of \$10,000 per day for each day not opened.
 - 2. Closure of TDMS due to CONTRACTOR equipment or operational failures liquidated damages of \$25,000 per day, for each day site must remain closed.
- C. Failure to provide back-up grinder(s) within 24 hours of equipment breakdown liquidated damages of \$2,000 per hour per approved grinding hours of operation per day.
- D. CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each occurrence of the following infractions:
 - 1. Failure to provide audit quality information by 5:00 p.m. of the following day of

EXHIBIT "A"

operation.

2. Loads not properly tarped or otherwise covered.
3. Mixing debris hauled from other sources with debris hauled under this Agreement.
4. Mixing vegetation debris with C & D material.

E. CONTRACTOR may be immediately terminated and not paid for the following:

1. Collection of any non-eligible, non-AUTHORITY approved stumps or debris.
2. Moving to another designated Collection Service Area without prior AUTHORITY approval.
3. Failure to provide service in accordance with guidelines set forth by FEMA and the AUTHORITY.
4. Soliciting work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement.
5. Alteration of placards placed on certified trucks and/or trailers.

Any disputes regarding Performance of Contractor will be presented to the Emergency Management Coordinator or designee for review. The Emergency Management Coordinator or designee shall complete review and make determination within three (3) calendar days. Decisions of the Emergency Management Coordinator or designee shall be final.

FEE SCHEDULE

PROPOSAL FORM 3 – PRICE PROPOSAL

PART A – VOLUME BASED PRICING FOR 3,000,000 CUBIC YARD (CY) DEBRIS DISASTER

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated TDMS.				
A. Vegetation	2,500,000	CY	\$9.75	\$24,375,000
B. Construction Debris / Mixed Debris	500,000	CY	\$9.75	\$4,875,000
2.0 TDMS operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and Phase I Reclamation.	3,000,000	CY	\$2.25	\$6,750,000
3.0 Processing of debris through grinding and/or chipping.	2,500,000	CY	\$2.25	\$5,625,000
4.0 Loading, hauling and disposing wood chips to final destination. <i>(This rate includes disposal cost)</i>	1,000,000	CY	\$8.95	\$8,950,000
5.0 Loading and hauling of construction debris and/or mixed debris from TDMS to a permitted C&D recycling facility or any other designated Disposal Facility. <i>(This rate shall not include disposal cost). Based on miles from TDMS to final destination– 1 way.</i>				
A 0 ≤ 20 miles	500,000	CY	\$3.60	
B > 20 ≤ 50 miles	500,000	CY	\$4.95	
C > 50 ≤ 100 miles	500,000	CY	\$7.95	
AVERAGE: (Item 6.0 A-C)				
AVERAGE: (Item 5.0 A-C) X 500,000 CY =				\$ 8,250,000
TOTAL PROPOSAL PRICE: (Items 1.0 - 5.0)				\$ 58,825,000

PROPOSER MUST PROVIDE PRICE FOR ALL LINE ITEMS 1 THRU 5. FAILURE TO DO SO MAY RENDER YOUR PROPOSAL TO BE DEEMED NON-RESPONSIVE.

Unit Prices, unless otherwise indicated, shall include all labor (operators, laborers, supervisors) and materials including but not limited to: supplies, equipment maintenance, repairs, repair parts, fuels, lubricants, cellular phones, transportation, and housing, if required necessary to accomplish the project. The quantities and distributions are estimated for the purpose of making an award. Locations of sites, debris quantities, destinations, material densities, etc. may differ substantially in an actual disaster.

Assumptions: 3,000,000 cubic yards of debris consisting of 2,500,000 cubic yards of vegetation debris and 500,000 cubic yards of mixed debris.

EXHIBIT "B"**PROPOSAL FORM 3 – PRICE PROPOSAL****PART B – HOURLY RATES**

TDMS SET-UP AND CLOSURE AND DEBRIS CLEARANCE FOR ACCESS - OPTIONAL USE BY COUNTY AND OTHER GOVERNMENTAL ENTITIES			
EQUIPMENT AND LABOR RATES			
EQUIPMENT TYPE	HOURLY EQUIPMENT RATE	HOURLY LABOR RATE	TOTAL HOURLY RATE
Bobcat Loader	\$70.00	\$55.00	\$125.00
Crew Foreman w/ Cell Phone and Pickup	\$35.00	\$80.00	\$115.00
Dozer, Tracked, D5 or similar	\$110.00	\$55.00	\$165.00
Dozer, Tracked, D6 or similar	\$120.00	\$55.00	\$175.00
Dozer, Tracked, D7 or similar	\$145.00	\$55.00	\$200.00
Dozer, Tracked, D8 or similar	\$225.00	\$55.00	\$280.00
Dump Truck, 18 CY-20 CY	\$85.00	\$60.00	\$145.00
Dump Truck, 21CY-30 CY	\$95.00	\$60.00	\$155.00
Generator and Lighting	\$45.00	\$0.00	\$45.00
Grader w/ 12' Blade	\$125.00	\$55.00	\$180.00
Hydraulic Excavator, 1.5 CY	\$115.00	\$55.00	\$170.00
Hydraulic Excavator, 2.5 CY	\$135.00	\$55.00	\$190.00
Knuckleboom Loader	\$225.00	\$70.00	\$295.00
Laborer w/ Chain Saw	\$25.00	\$45.00	\$70.00
Laborer w/ small tools, traffic control, flag person	\$10.00	\$45.00	\$55.00
Lowboy Trailer w/ Tractor	\$100.00	\$55.00	\$155.00
Operations Manager w/ Cell Phone and Pickup	\$35.00	\$95.00	\$120.00
Pickup Truck, 5 Ton	\$35.00	\$45.00	\$80.00
Soil Compactor 81 HP+	\$80.00	\$55.00	\$135.00
Soil Compactor to 80 HP	\$70.00	\$55.00	\$125.00
Soil Compactor, Towed Unit	\$75.00	\$55.00	\$130.00
Truck, Flatbed	\$35.00	\$45.00	\$80.00
Tub Grinder, 800 to 1,000 HP	\$550.00	\$55.00	\$605.00
Water Truck	\$85.00	\$45.00	\$130.00
Wheel Loader, 2.5 CY, 950 or similar	\$125.00	\$55.00	\$180.00
Wheel Loader, 3.5-4.0 CY, 966 or similar	\$145.00	\$55.00	\$200.00
Wheel Loader, 4.5 CY, 980 or similar	\$195.00	\$55.00	\$250.00
Wheel Loader-Backhoe, 1.0-1.5 CY	\$85.00	\$55.00	\$140.00
Other – Please List			

Attach additional sheet with equipment type and labor rates, if needed

PROPOSAL FORM 3 – PRICE PROPOSAL

PART C – UNIT COST SCHEDULE

ITEM	HAZARDOUS STUMP REMOVAL, HAULING, AND DISPOSAL	UNIT	UNIT COST
1.	24-inch diameter to 48.99-inch diameter	Stump	\$475.00
2.	49-inch diameter and greater	Stump	\$825.00
3.	Stump Fill Dirt – Fill dirt for stump holes after removal	CY	\$25.00
HAZARDOUS HANGING LIMBS (HANGERS) To include removal of all hanging limbs. Limbs to be cut and placed on the right of way for collection as vegetative debris.			
4.	2-inch diameter and greater	Tree	\$95.00
HAZARDOUS TREE REMOVAL Trees to be flush cut at ground level and placed on the right of way for removal as vegetative debris.			
5.	6-inch diameter to 11.99-inch diameter	Tree	\$105.00
6.	12-inch diameter to 23.99-inch diameter	Tree	\$250.00
7.	24-inch diameter to 35.99-inch diameter	Tree	\$350.00
8.	36-inch diameter to 47.99-inch diameter	Tree	\$450.00
8.	48-inch diameter and greater	Tree	\$695.00

NOTE:

The following is information only and will NOT be considered in the evaluation of this RFP

The AUTHORITY reserves the right to use this contract to handle small quantities of debris removal and as support for our Franchise Contracts as needed. Below is a daily rate to remove debris. The AUTHORITY will pay for the disposal cost. There is no requirement to provide a rate, however if you do, we expect your company to honor this special service and respond within 48 hours at the rate below.

COLLECTION SERVICE ONLY	
EQUIPMENT	DAILY RATE (10 HRS/DAY)
Knuckleboom Loader and Operator	\$ 295.00

ATTACHMENT "A"

**SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY**

7501 North Jog Road
West Palm Beach, Florida 33412
Telephone: 561-640-4000 • Fax: 561-640-3400



**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No. _____

In accordance with _____ (Contractor) contract, with the Solid Waste Authority of PBC, Florida, (AUTHORITY) Agreement No. _____ for Hurricane/Disaster Debris Removal, Reduction, and Disposal dated _____ the AUTHORITY hereby requests and authorizes the services to be performed on the project as described below:

Project: _____

Specific Work to be performed: _____

Duration of Work (Include Start Date, End Date and Total Calendar Days): _____

Method of Payment: _____

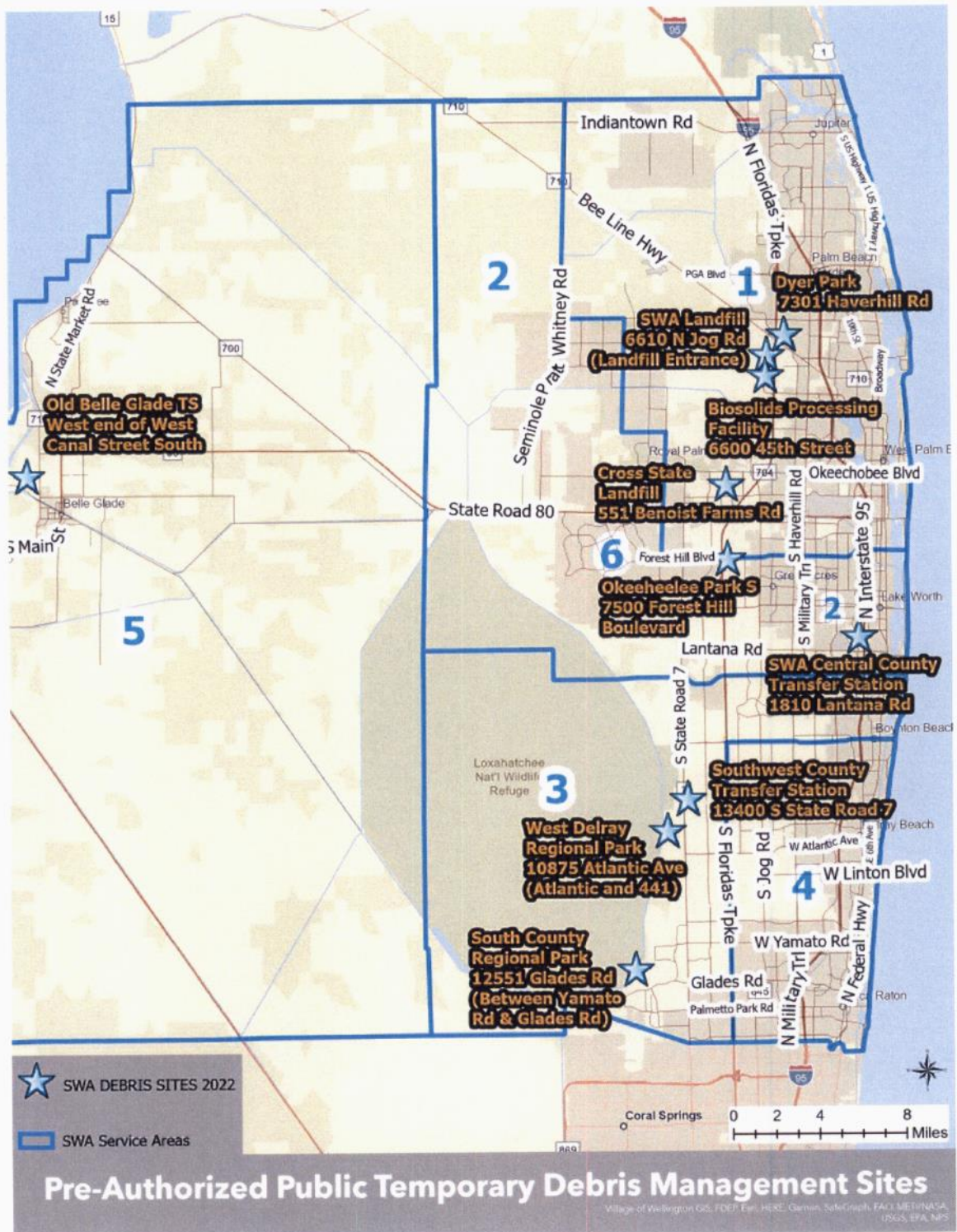
Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ Date: _____

AUTHORITY Signature: _____ Date: _____

SWA Use Only			
SWA Requestor/Monitor: _____		Date: _____	
SWA Dept. Director: _____		Date: _____	
Vendor No.: _____	Account No.: _____	Project: _____	
Purchasing: _____	Budget: _____	Accounting: _____	

ATTACHMENT "B"



ATTACHMENT "C"

PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE

The Public Assistance Program and Policy Guide, Version 4, Effective June 1, 2020 (see hyperlink below) is the most recent reference material that will provide additional information:

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf

PROJECT MANAGEMENT

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient close-outs of PA Program grants.

Record Keeping

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the "who, what, when, where, why, and how much" for each item of disaster recovery work. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;
- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

The Federal Office of Management and Budget requires grant recipients to maintain financial and program records on file for three years following final payment. Records of grant recipients may be subject to the provisions of the Single Audit Act, as described on page 117 of this guide. Applicants may refer to the Applicant Handbook, FEMA 323, for additional information regarding record-keeping.

ATTACHMENT "D"

MOBILIZATION SCHEDULE

CONTRACTOR shall commence mobilization of equipment, operators, and laborers immediately upon receipt of a Mobilization Task Order to meet the progress pattern set below.

	Category 1 & 2	Category 3	Category 4	Category 5
Within 24 hours	25%	25%	20%	15%
Within 48 hours	30%	30%	30%	25%
Within 72 hours	40%	40%	40%	40%
Within 96 hours	60%	60%	50%	50%
Within 5 days	100%	80%	60%	60%
Within 10 days		100%	80%	70%
Within 14 days			100%	80%
Within 20 days				100%

ATTACHMENT "E"

FHWA-1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (Included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate supervision and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting 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.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (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 (1.) of this section, in the sum of \$10 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 (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT "F"

BUY AMERICA REQUIREMENTS

Source of Supply – Steel and Iron (Federal Aid Contracts Only): For Federal-aid contracts, the Contractor will only use steel and iron produced in the United States, in accordance with the buy America provisions of 23 CFR 635.410. Contractor will ensure that all manufacturing processes for these materials occur in the United States. A manufacturing process is any process that modifies the chemical content, physical shape, size or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (*e.g.*, concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the compensation or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. The Contractor shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the finished product was manufactured in the United States in accordance with the requirements of this provision. Such certification shall also include: (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced with the United States except for minimal quantities of foreign steel and iron and specify the actual value of the product. Each such certification shall be furnished to the AUTHORITY prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, Contractor shall furnish invoices to document the costs of such material, and obtain the AUTHORITY'S written approval prior to incorporating the material into the project.

ATTACHMENT "G"

PERFORMANCE AND PAYMENT BOND

BY THIS BOND, WE, _____, Inc., as Principal and _____ a Corporation, as Surety, are bound to the Solid Waste Authority of Palm Beach County, hereinafter referred to as "Authority", in the sum of _____ Dollars (up to \$10,000,000), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Agreement dated _____, 20____ between Principal and Authority for Proposal of Hurricane/Disaster Debris Removal, Reduction and Disposal, **Agreement No. 22-201**, the Agreement being made a part of this bond by reference, in the time and in the manner prescribed in the Agreement, and;
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials and supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement, and;
3. Pays Authority all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Authority sustains because of a default by Principal under the Agreement, and;
4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement, and;
5. At completion of all work covered by Agreement and Final Payment by Authority to Principal then Principal will replace this Performance and Payment Bond with a Proposal Bond, in the amount of 5% of this Performance and Payment Bond, to be held by the Authority as a guarantee that Principal will provide to the Authority a Performance and Payment Bond in the amount of up to \$10,000,000 on the occasion of a subsequent Task Order in accordance with the above referenced Agreement;

then this bond is void; otherwise it remains in full force.

Surety shall be responsible for any and all liquidated damages imposed by the Authority for the referenced Agreement.

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or the changes does not affect Surety's obligation under this bond. Any increase in the total Agreement amount as authorized by the Authority shall accordingly increase the Surety's obligation by the same dollar amount of said increase. CONTRACTOR shall be responsible for notification to Surety of all such changes.

See subsection (2) of Section 255.05, Florida Statutes as amended for the notice and time limitations for claimants.

Signed and sealed this ____ day of _____, 20____.

PRINCIPAL: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

NOTE:

Date of Bond must not be prior to date of Agreement. If CONTRACTOR is a Partnership, all partners must execute bond.

IMPORTANT:

Surety companies executing bonds **must** appear and remain on the Treasury Department's most current list (Circular 570 as amended) during construction, guarantee and warranty periods, and be authorized to transact business in the State of Florida, and be pre-approved by the Authority.



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGREEMENT FOR

HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

CROWDERGULF JOINT VENTURE, INC.

AGREEMENT NO. 22-201B

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33412
(561) 640-4000**

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of APRIL 25th, 2022, (hereinafter referred to as the Agreement) by and between **Solid Waste Authority of Palm Beach County**, a dependent special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and **CROWDERGULF JOINT VENTURE, INC.** (hereinafter referred to as CONTRACTOR and when referred to collectively with AUTHORITY, the Parties), a Corporation, whose Federal Employer ID Number is **01-0626019**;

Whereas, in accordance with the AUTHORITY's Request for Proposals No. 22-201/DL solicited to employ the services of the CONTRACTOR for the purpose of providing Hurricane/Disaster Debris Removal, Reduction and Disposal, and;

Whereas, CONTRACTOR represents it is qualified, capable and prepared to provide such services.

Now, therefore, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is acknowledged by the other, the parties hereto agree as follows:

ARTICLE 1 - EFFECTIVE DATE AND INCORPORATION OF RECITALS

The foregoing recitals are hereby incorporated herein by reference.

- 1.1 The Effective Date of this Agreement shall be **May 8, 2022** and the Initial Term of this Agreement is for three (3) years and shall expire on **May 7, 2025**, unless terminated earlier as provided for herein.
- 1.2 The AUTHORITY shall have the option of extending this Agreement for three (3) additional years, as approved by the AUTHORITY's Board or designee, in its sole and unfettered discretion, on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both Parties.
- 1.3 The continuance of this Agreement from year-to-year is contingent upon successful annual recertification of the CONTRACTOR's capabilities. The recertification process will be a review of the fiscal (bankruptcy, etc.), logistical (equipment availability, etc.), and moral (conviction for environmental crime, conviction for crime against a public entity, etc.) responsibility of the CONTRACTOR and a determination by the AUTHORITY, based on this review, of whether or not the CONTRACTOR continues to be a viable firm to provide the services described in this Agreement.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR shall perform the services as specifically stated in the Scope of Work, attached hereto and made a part hereof as Exhibit A, and/or as may be specifically designated and authorized by the AUTHORITY. Such authorizations will be referred to as Task Orders. Each Task Order shall set forth a specific scope of services, rate/amount of compensation, completion date, and other pertinent details of the task being authorized. The AUTHORITY, by virtue of this Agreement, gives the CONTRACTOR no guarantee of any work/services or any specific amount of work/services that may be accomplished during the period this Agreement is in full force and effect.

ARTICLE 3 - COMPENSATION

- 3.1 The AUTHORITY shall pay CONTRACTOR in accordance with the Fee Schedule, attached hereto and made a part hereof as Exhibit B. In addition, the Parties may negotiate a lump sum or not-to-exceed amount on a per-project basis on an individual Task Order.
- 3.2 The CONTRACTOR shall submit semi-monthly invoices for services rendered. All invoices must reference

the Task Order number. Invoices shall include a statement of progress and appropriate audit quality detail to satisfy the Federal Emergency Management Agency (FEMA) requirements.

3.3 Payment of CONTRACTOR by AUTHORITY is not contingent upon the AUTHORITY being reimbursed by the Federal Emergency Management Agency (FEMA). Payment to CONTRACTOR will be made for any work directed by the AUTHORITY which is determined by Federal and State agencies to be ineligible for reimbursement.

3.4 Payment of invoices shall be within thirty (30) days after receipt of a correct, fully documented invoice. All invoices shall be delivered to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attn: Accounts Payable

3.5 CONTRACTOR will clearly mark its final/last billing with the words "Final Invoice". This will certify that all services have been fully performed under this Agreement and that all charges and costs have been invoiced to the AUTHORITY. Thereupon, this account will be closed and any additional charges or costs, not included in the Final Invoice, shall be waived by CONTRACTOR. The AUTHORITY shall not be liable for the payment of any such additional charges or costs not included in the Final Invoice.

3.6 The AUTHORITY will retain 5% of the payment under each Task Order until such time as the entire project is completed to the AUTHORITY's satisfaction and all subcontractors and any material suppliers verify that they have been paid.

ARTICLE 4 - INSURANCE

4.1 During the performance of the Services under this Agreement, CONTRACTOR shall maintain the following insurance policies written by an insurance company authorized to do business in Florida and acceptable to the AUTHORITY.

1. **General Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$1,000,000 for each occurrence.

2. **Automobile Liability** Insurance with bodily injury limits of not less than \$5,000,000 for each person and not less than \$5,000,000 for each accident and with property damage limits of not less than \$5,000,000 for each accident.

3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.

4. **Excess Liability** Insurance with limits of not less than \$10,000,000 for each occurrence and annual aggregate.

4.2 Deductible amounts shall not exceed 5% of the total amount of required insurance in each category. Should any policy contain any unusual exclusions, said exclusions shall be so indicated on the certificate(s) of insurance.

4.3 CONTRACTOR shall furnish AUTHORITY **Certificates of Insurance**, which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** after written notice has been given to the AUTHORITY. CONTRACTOR shall include AUTHORITY as an **Additional Insured** on the General Liability and Automobile Liability insurance policy required by this

Agreement. All of CONTRACTOR'S subcontractors shall be required to include AUTHORITY and CONTRACTOR as **Additional Insureds** on all of their liability insurance policies.

- 4.4 CONTRACTOR shall ensure that CONTRACTOR's naming of the AUTHORITY as an additional insured on its General Liability and Automobile Liability insurance policies pursuant to this Agreement shall afford coverage for the negligent, reckless, intentionally wrongful or willful acts of CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement.
- 4.5 In the event that subcontractors used by the CONTRACTOR do not have insurance, or do not meet the required insurance limits herein, CONTRACTOR shall indemnify and hold harmless the AUTHORITY for any claim(s) in excess of the subcontractor's insurance coverage.
- 4.6 The CONTRACTOR shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

- 5.1 The CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the Services performed pursuant to this Agreement as is ordinarily provided by comparable, qualified professionals under similar circumstances. The CONTRACTOR shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.
- 5.2 The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONTRACTOR agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

The CONTRACTOR shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the Agreement.

6.3 SURVIVAL

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 - INDEPENDENT CONTRACTOR

- 7.1 The CONTRACTOR is, and shall be, in the performance of all work services and activities performed under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

- 7.2 The CONTRACTOR does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 8 - AUTHORITY TO CONDUCT BUSINESS

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all requirements in this Agreement.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the Services, the CONTRACTOR will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

ARTICLE 10 - SUB-CONTRACTING

- 10.1 The AUTHORITY reserves the right, in its sole and unfettered discretion, to accept the use of a subcontractor or to reject the selection of a particular subcontractor under this Agreement.
- 10.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

The AUTHORITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the AUTHORITY will provide an exemption certificate to CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the AUTHORITY, nor shall the CONTRACTOR be authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the AUTHORITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of the Solid Waste Authority of Palm Beach County.

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONTRACTOR, including existing reports, studies, financial information, and other required data that are available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

- 14.1 The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR: a) fails to satisfactorily perform any provisions of this Agreement; or b) fails to make progress so as to endanger performance under the terms and conditions of this Agreement; or c) repeatedly fails to perform; or d) does not remedy any such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONTRACTOR, the AUTHORITY may, in its sole and unfettered discretion, procure goods and/or services similar to those required under this Agreement and the CONTRACTOR shall be liable for any excess costs incurred due to this action.
- 14.2 If it is determined that the CONTRACTOR was not in default or that the default was excusable (e.g., failure

due to causes beyond the control of, or without the fault or negligence of the CONTRACTOR), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

- 15.1 The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate this Agreement, in whole or in part, for the convenience of the AUTHORITY. The Director of Purchasing Services shall give five (5) business days prior written Notice of Termination to the CONTRACTOR, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONTRACTOR has the right to withdraw, without adverse action by the AUTHORITY, from the entire Agreement.
- 15.2 Unless directed differently in the Notice of Termination, the CONTRACTOR shall incur no further obligations in connection with the terminated work and shall stop work to the extent specified on the date given in the Notice of Termination. Additionally, unless directed differently, the CONTRACTOR shall terminate outstanding orders and/or subcontracts related to the terminated work.
- 15.3 Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination specified in the Notice of Termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

- 16.1 Neither the AUTHORITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 17 – JURISDICTION, VENUE, WAIVER OF JURY TRIAL AND REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located exclusively in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial failure by any party to exercise any right, power, or remedy hereunder, shall preclude that party from exercising that right, power or remedy in the future. **THE AUTHORITY AND CONSULTANT FREELY AND VOLUNTARILY AGREE TO WAIVE ITS RESPECTIVE RIGHT TO A JURY TRIAL ON ANY ISSUE(S) SO TRIABLE.**

ARTICLE 18 – COMMERCIAL NON-DISCRIMINATION POLICY

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it will comply with the AUTHORITY's Commercial Non-Discrimination Policy, as described in Section 6.3 of the AUTHORITY's Purchasing

Manual, including subsequent amendments thereto, if any. As part of such compliance, the CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, gender, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONTRACTOR retaliate against any person for reporting instances of such discrimination. The CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the AUTHORITY's relevant marketplace in Palm Beach County. The CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the CONTRACTOR from participating in AUTHORITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The CONTRACTOR agrees and understands that the provisions of Section 6.3 of the AUTHORITY's Purchasing Manual are incorporated herein by reference and that the CONTRACTOR is familiar with the contents of same.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further or subsequent breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any further or subsequent default or breach.

ARTICLE 20 - SEVERABILITY

- 20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 20.2 The provisions of this section shall not prevent the entire Agreement from being void if a provision which is of the essence of the Agreement is determined to be void.

ARTICLE 21 - ENTIRETY OF AGREEMENT AND MODIFICATION

The AUTHORITY and the CONTRACTOR agree that this Agreement, including Exhibits and Attachments, and any matters incorporated by specific reference set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the AUTHORITY and CONTRACTOR pertaining to the services, whether written or oral. None of the provisions or terms and conditions contained in this Agreement may be added to, amended, modified, superseded or otherwise altered except by written instrument executed by the parties thereto.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONTRACTOR each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party and its partners, successors, executors, administrators, assigns and legal representative. CONTRACTOR shall not assign this Agreement without the prior express written approval of the AUTHORITY in its sole discretion via executed amendment.

ARTICLE 23 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - TRUTH-IN-NEGOTIATION CERTIFICATE

- 24.1 Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of the Agreement.
- 24.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this 'Certificate' within one (1) year following payment.

ARTICLE 25 - OWNERSHIP OF DOCUMENTS

CONTRACTOR shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the AUTHORITY for its use and/or distribution as may be deemed appropriate by the AUTHORITY in its sole and unfettered discretion.

ARTICLE 26 - PUBLIC RECORDS, ACCESS AND AUDITS

- 26.1 It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.

26.2 **DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:**

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

RECORDS MANAGER

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

7501 NORTH JOG ROAD

WEST PALM BEACH, FL 33412

561-640-4000 EXT. 4606

RECORDSCUSTODIAN@SWA.ORG

- 26.3 The CONTRACTOR shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>) after completion or termination of this Contract. Upon AUTHORITY'S request, CONTRACTOR shall provide AUTHORITY with access to such records during normal business hours at a location within Palm Beach County for purposes of

inspection or audit.

- 26.4 Notwithstanding anything herein to the contrary, the CONTRACTOR expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Contract; ii) acting on behalf of the AUTHORITY in the performance of this Contract; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.
- 26.5 Any public records requests directed to, or related in any way to this contract shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager, they shall immediately notify the CONTRACTOR and the CONTRACTOR must provide the records or allow access to the records within a reasonable time. A CONTRACTOR who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.
- 26.6 Therefore, the CONTRACTOR is required to:
- 1) Keep and maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
 - 2) Upon AUTHORITY's request from the AUTHORITY's Records Manager; provide the AUTHORITY with a copy of the requested records to allow the records to be inspected or copied within a reasonable time on the same terms and conditions that the AUTHORITY would provide the records at a cost that does not exceed the cost provided by Florida law;
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the CONTRACTOR does not transfer the records to the AUTHORITY; and
 - 4) Upon completion of the Agreement, transfer at no cost to the AUTHORITY, all public records in possession of the CONTRACTOR or keep and maintain public records to the AUTHORITY upon completion or termination of the Agreement; the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the AUTHORITY, upon request from the AUTHORITY's Records Manager, either during performance of the Agreement or after termination or completion of the Agreement in a format that is compatible with the information technology systems of the AUTHORITY.
- 26.7 Failure of the CONTRACTOR to comply with these requirements shall be a material breach of this Contract.
- 26.8 CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency (FEMA) sub-grantee as required by 2 CFR 200.333. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.

26.9 In the event records retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with the State of Florida requirements.

ARTICLE 27 - INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

ARTICLE 28 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO AUTHORITY

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attention: Executive Director
Office No.: 561-640-4000 Fax No.: 561-640-3400

AS TO CONTRACTOR

CrowderGulf Joint Venture, Inc.
5629 Commerce Boulevard
East Mobile, AL. 36619

Attention: Ashley Ramsay-Naile, President
Office No.: 646-872-1548 Fax No.: 251-459-7433 E-Mail: jramsay@crowdergulf.com

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and AUTHORITY.

ARTICLE 29 - CONTRACT ADMINISTRATION

Services of CONTRACTOR shall be under the general direction of the **Chief Operations Officer**, or designee, who shall act as the AUTHORITY'S representative during the term of the Agreement.

ARTICLE 30 - KEY PERSONNEL

CONTRACTOR shall notify AUTHORITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. AUTHORITY has the right to reject any proposed changes in key personnel. The following personnel shall be considered key personnel:

Nick Pratt – Director of Field Operations
Cell No.: 251-402-5566 E-Mail: npratt@crowdergulf.com

John Campbell – Regional Director - East
Cell No.: 859-963-8672 E-Mail: jcampbell@crowdergulf.com

Buddy Young – Regional Director - West
Cell No.: 940-597-4252 E-Mail: byoung@crowdergulf.com

Don Madio – Regional Manager - FL
Cell No.: 813-285-8749 E-Mail: dmadio@crowdergulf.com

Reid Loper – Vice President/Senior Project Manager
Cell No.: 678-477-3755 E-Mail: rloper@crowdergulf.com

Wesley Naile – Contracts Manager
Cell No.: 251-533-5585 E-Mail: wnaile@crowdergulf.com

Margaret Wright – Documentation Director/PHD
Cell No.: 251-604-6346 E-Mail: mwright@crowdergulf.com

Leigh Anne Ryals – Emergency Management & Quality Control Specialist
Cell No.: 251-751-8660 E-Mail: lryals@crowdergulf.com

Jeff Zemlick – Safety Manager
Cell No.: 251-509-9422 E-Mail: jzemlick@crowdergulf.com

Wilber Ledet – Senior Project Manager
Cell No.: 228-326-5915 E-Mail: wledet@crowdergulf.com

Matt Lucas – Senior Project Manager – East Coast
Cell No.: 609-731-2858 E-Mail: mlucas@crowdergulf.com

Andrew Sprinkle – Project Manager
Cell No.: 251-423-1100 E-Mail: atsprinkle@crowdergulf.com

Howard Turner – Project Manager – East Coast
Cell No.: 804-814-6197 E-Mail: hturner@crowdergulf.com

Isam Brisco – Project Manager
Cell No.: 512-373-0586 E-Mail: ibrisco@crowdergulf.com

Joe Hayes – Project Manager
Cell No.: 561315-1360 E-Mail: jhayes@crowdergulf.com

Lew Najor– Project Manager
Cell No.: 850-393-9985 E-Mail: lnajor@crowdergulf.com

Barton Holmes– Project Manager
Cell No.: 864-906-1671 E-Mail: barton@crowdergulf.com

ARTICLE 31 – EQUAL BUSINESS OPPORTUNITY PROGRAM:

The Governing Board of the AUTHORITY has implemented the Economic Inclusion Policy administered by the Equal Business Opportunity (EBO) Program Office to ensure that all segments of its business population, including, but not limited to local, small, minority, and women-owned businesses, have an equitable opportunity to participate in the AUTHORITY'S procurement process, in accordance with Section 6.1 through 6.4 of the Purchasing Manual. Program tools and solicitation incentives are hereby referred to as the Affirmative Procurement Initiatives (API).

31.1 Affirmative Procurement Initiative (API):

The AUTHORITY has NOT applied an Affirmative Procurement Initiative to this Agreement.

ARTICLE 32 - SCRUTINIZED COMPANIES

- 32.1 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

- 32.2 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, this Agreement certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

ARTICLE 33 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

- 33.1 The CONTRACTOR agrees that this Agreement constitutes an offer to all State and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONTRACTOR deem it in the best interest of their business to do so.

- 33.2 The Agreement in no way restricts or interferes with any State or local government agencies of the State of Florida from re-solicitation.

ARTICLE 34 – THIRD PARTY BENEFICIARY DISCLAIMER

It is not the intention of these documents to create third party beneficiary status in any person or entity that is not a direct party to this Agreement, and no language in this Agreement should be construed or interpreted as creating a third party beneficiary.

ARTICLE 35 – E-VERIFY – EMPLOYMENT ELIGIBILITY

- 35.1 The CONTRACTOR certifies, warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended and that CONTRACTOR shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the CONTRACTOR'S subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.
- 35.2 AUTHORITY shall terminate this Agreement if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If AUTHORITY has a good faith belief that one of CONTRACTOR'S subcontractor(s) has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, AUTHORITY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor. If AUTHORITY terminates this Agreement pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by AUTHORITY for a period of one (1) year from the date on which the Agreement was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by AUTHORITY as a result of the termination.

ARTICLE 36 – CONFIDENTIALITY

No reports, information, computer programs, documentation, and/or data given to, or prepared or assembled by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the AUTHORITY.

ARTICLE 37 – PAYMENT ADJUSTMENT SCHEDULE

- 37.1 The AUTHORITY acknowledges the fluctuating nature of prices.
- 37.2 Annual Non-Fuel: The Non-Fuel Adjustment shall be applied to those rates subject to adjustment and as provided within this Agreement. For the purpose of this Agreement, the Non-Fuel component is assumed to represent 90% of the CONTRACTOR's costs. Therefore, 90% of the approved rates shall be so adjusted:

The rates shall be adjusted as follows:

The rates shall be adjusted annually, commencing on the first anniversary date, by the change in the Water and Sewer and Trash Collection Services Index, Series ID CUSR0000SEHG, as published by the United States Department of Labor, Bureau of Labor Statistics (www.bls.gov). The change in the index shall be calculated by dividing the average of the index over the twelve-month period ending the December preceding the effective date of the adjustment (January – December 2022) by the average of the index over the twelve-month period from January 2021 through December 2021. The first Annual Non-Fuel adjustment shall be effective May 7, 2023 to May 6, 2024.

For example:

For the Contract year beginning May 7, 2023, the average of the index over the twelve-month period from January 2022 through December 2022 shall be divided by the average of the index over the twelve-month period from January 2021 through December 2021, multiplying the result by ninety (90) percent of the contract or AUTHORITY established price, and subtracting ninety (90) percent of the contract or AUTHORITY established price.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most Recent Year Average / Prior Year Average x .90 x Rate – (.90 x Rate) = Annual Adjustment

Calendar:

Annual Payment Adjustment Calendar

April 2023	April 2024
---------------	---------------

Extension Clause Annual Payment Adjustment Schedule

April 2025	April 2026	April 2027
---------------	---------------	---------------

37.3 Activation Fuel Adjustment (Fuel Surcharge/Credit)

The rates subject to adjustment shall be subject to a fuel price surcharge/credit for fluctuations in the price of fuel. For the purpose of this Agreement, fuel is assumed to represent 10% of the Contractor's costs therefore 10% of the approved rates shall be so adjusted. Fuel adjustment shall be calculated and effective upon activation.

The rates shall be adjusted as follows:

For the rates subject to adjustment, a fuel surcharge/credit shall be charged/credited basis based on the percentage change in the average price of fuel as published by the Oil Price Information Service (OPIS) and measured by the OPIS Standard Rack, OPIS No. 2 Distillate Gross Prices, Unbranded Average for Miami, Florida between the month of **January 2022 (Base)** and the most recent month available upon activation.

Fuel Adjustment does not use a floor or ceiling and provides adjustments in either direction without limit.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most recent OPIS (at activation) / Base x .10 x Rate – (.10 x Rate) = Fuel Adjustment (for duration of activation)

For example:

Should activation occur October 2023, the fuel surcharge/credit shall be calculated by dividing the reported unbranded average price for September 2023 by the Base (unbranded average price for January 2022), multiplying the result by ten (10) percent of the contract or Authority established price, and subtracting ten (10) percent of the contract or Authority established price.

- 37.4 In the event that either of these indices is no longer available, the parties shall mutually agree to a replacement index. The value of the adjustment will be determined by the AUTHORITY.

ARTICLE 38 – ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

The CONTRACTOR has entered into a contingent Agreement with the AUTHORITY for Hurricane/Disaster Debris Removal, Reduction, and Disposal. The Agreement awarded will be activated on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY may activate, assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action as it determines in its sole and unfettered discretion.

ARTICLE 39 – TASK ORDER/PERFORMANCE

Task Orders shall be executed bilaterally, and the scope of services and format of Task Orders shall be mutually agreed to by the CONTRACTOR and AUTHORITY. Performance will be measured by the metrics established in each Task Order. After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide a written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR default or underperformance by any means it deems in its best interest. CONTRACTOR will be required to provide a daily report of quantity of work performed under each Task Order. The daily report shall be submitted by 11:00 a.m. or earlier the following morning.

ARTICLE 40 – BONDS

CONTRACTOR shall maintain a Proposal Bond in the sum of \$500,000. The CONTRACTOR's Proposal Bond will be returned to the CONTRACTOR in exchange for and acceptance of an appropriate size bond as determined by the AUTHORITY after assessment of damage and definition of the CONTRACTOR's scope of service. In case of hurricane caused damage, a Category 1 storm would require a \$2,000,000 Bond, a Category II would require a \$4,000,000 Bond, a Category III would require a \$6,000,000 Bond, a Category IV would require an \$8,000,000 Bond, and a Category V would require a \$10,000,000 Bond. The Bond required would be a Performance and Payment Bond, Attachment G. The cost of the Bond is included in the unit rates in the Fee Schedule, Exhibit B. The CONTRACTOR shall maintain the Proposal Bond in effect until the Performance and Payment Bond is submitted to and accepted by the AUTHORITY. If the CONTRACTOR fails to supply a Performance and Payment Bond, the AUTHORITY shall be entitled to retain the Proposal Bond to rectify the CONTRACTOR's unacceptable performance. Pending successful annual CONTRACTOR recertification, the Proposal Bond shall be in effect for the entire term of the Agreement, except for period(s) of time when a Performance and Payment Bond is in effect.

ARTICLE 41 – FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273

- 41.1 This Agreement incorporates all of the provisions set forth in the document commonly known as FHWA Form 1273, Attachment E, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor" as used in Attachment E shall apply to and mean the CONTRACTOR who may be referred to in Attachment E as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONTRACTOR will perform the duties and obligations of the other contracting party regardless of the description or label used in Form 1273, Attachment E.
- 41.2 The CONTRACTOR shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or "linked" to a particular Federal Highway. Wage rate tables may be found at <http://www.dot.state.fl.us/construction/wage.shtml>. Said wage rate tables are incorporated into and made part of this Agreement by reference.

ARTICLE 42 – BUY AMERICA REQUIREMENTS

The CONTRACTOR agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), as they may be amended from time to time) as they relate to Federal-aid contracts and the use of steel and iron produced in the United States. A description of the requirements of Buy America is set forth in Attachment F, which is attached hereto and incorporated by reference as part of this Agreement. CONTRACTOR shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, and FEMA, to the extent applicable.

ARTICLE 43 – DISADVANTAGED BUSINESS ENTERPRISES

- 43.1 This provision shall supplement Article 31 "Equal Business Opportunity Program" of the Agreement. The Agreement is subject to the requirements of 49 CFR Part 26. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13). Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.
- 43.2 The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.
- 43.3 The CONTRACTOR shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONTRACTOR shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation's (FDOT) website found at www.bipincwebapps.com/bizwebflorida/. Audits may be conducted to review payments to DBE subcontractors. The CONTRACTOR will fully cooperate with the AUTHORITY, FDOT, or FEMA regarding the monitoring of subcontractors and payments made thereto.

ARTICLE 44 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

- 44.1 This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONTRACTOR shall verify that neither the CONTRACTOR, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.
- 44.2 The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONTRACTOR must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. CONTRACTOR's certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 45 – ACCESS TO RECORDS AND THEIR RETENTION

- 45.1 This provision shall supplement Article 26 of this Agreement. The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONTRACTOR agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.
- 45.2 The CONTRACTOR shall make all of its books, records, and other documents related, in any manner to its or its subcontractors' performance of the Agreement, available to the AUTHORITY and any other funding entity (e.g. FDOT, FEMA, the Comptroller General of the U.S. or any of their authorized representatives) for the purpose of examination, audit, reproduction, excerpts and transcripts, during normal business hours, at the CONTRACTOR's place of business or if CONTRACTOR's place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONTRACTOR shall also require its subcontractors to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONTRACTOR.

ARTICLE 46 – AUDIT REQUIREMENTS

This provision shall supplement Article 26 of this Agreement. The CONTRACTOR agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONTRACTOR agrees that it will comply, execute any necessary documents and fully cooperate with the AUTHORITY and any State and/or Federal funding agency(ies), including but not limited to FDOT, Florida's Auditor General, FEMA, or any of their authorized representatives, in any audit or monitoring procedures or processes any such entity(ies) may undertake related to CONTRACTOR's performance of the Agreement in order to properly and satisfactorily complete the audit, if any.

ARTICLE 47 – NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONTRACTOR shall cooperate with the AUTHORITY, FDOT, and FEMA so as to assure that all activities related to the performance of this Agreement comply with the requirements of the National NEPA of 1969, as amended, and the regulations and guidance related thereto.

ARTICLE 48 – AMERICANS WITH DISABILITIES ACT

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act of 1990 (42 USC 12102, et seq.), as it may be amended, and all applicable impending regulations of the U.S. DOT, FEMA, and other Federal-aid agencies.

ARTICLE 49 – COMPLIANCE WITH TITLE VI, TITLE VII, AND OTHER FEDERAL LAWS AND REGULATIONS

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 USC 2000d et. Seq. and 3601 et seq.) and the Age Discrimination and Employment Act of 1967 and Section 303 of the Age Discrimination Act of 1975, as amended (42 USC 6102), and all applicable Federal laws and regulations, policies, procedures, and directives of the U.S.DOT, FEMA and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

ARTICLE 50 – CONVICT LABOR PROHIBITION

The CONTRACTOR does hereby represent and certify that it will comply with the convict labor prohibition in 23 U.S.C. 114, and all implementing regulations thereto.

ARTICLE 51 – CERTIFICATION REGARDING LOBBYING ACTIVITIES

A Bidder or Proposer for an award of certain Federal-Aid contracts in the amount of \$100,000 or more, must file the certification required by 49 CFR Part 2. The CONTRACTOR confirms that by signing and submitting a Bid or Proposal for the work covered by this Agreement, it made the certification described in Section X1 of the Attachment F herein.

ARTICLE 52 – DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

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

ARTICLE 53 – NO OBLIGATION BY FEDERAL GOVERNMENT

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

ARTICLE 54 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

In **Witness Whereof**, AUTHORITY, and CONTRACTOR have made and executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

WITNESS:

1.


2.

By:

Daniel Pellowitz
Executive Director

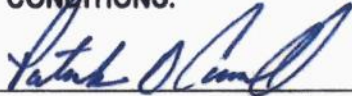
(SEAL)

APPROVED AS TO LEGAL SUFFICIENCY:

Howard J. Falcon III
By: 
Howard J. Falcon, III
General Counsel

Digitally signed by Howard J. Falcon III
DN: cn=Howard J. Falcon, o=Enterprise,
ou=Users, email=HJFalcon@pbcgov.org,
c=US, date=2022.04.22 14:40:16-04'00',
reason: your signing location here
port PDF Editor Version: 11.2.1


**APPROVED AS TO TERMS AND
CONDITIONS:**


Signature
Patrick D. Carroll
Print Name
COO
Title

ATTEST:


Corporate Secretary

CROWDERGULF JOINT VENTURE, INC.:


Authorized Signature
Ashley Ramsay-Naile
Print Name
President
Title
Date

WITNESS:

1.

2.

(Affix Corporate Seal)

Approved by Authority Board on April 13, 2022, Item No.: 9. C.1

SCOPE OF WORK

1. PROJECT DESCRIPTION AND REQUIREMENTS:

- A. The AUTHORITY seeks COINTRACTOR to remove and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible garbage) from public property and public rights-of-way, and to setup and operate Temporary Debris Management Site(s) (TDMS) in Palm Beach County, Florida, immediately after a hurricane or other disaster.
- B. The objective of this RFP and subsequent contracting activity is to secure the services of an experienced CONTRACTOR who is capable of efficiently removing large volumes of disaster-generated debris from a large area in a safe, timely and cost-effective manner and lawfully disposing of all debris. CONTRACTOR must be capable of assembling, directing, and managing a work force that can complete the debris management operations in 120 days or less. The duration of effort/completion dates of all tasks will be determined jointly by the AUTHORITY and CONTRACTOR. This determination will be set in writing in appropriate Task Order(s).
- C. The CONTRACTOR shall perform all work in strict accordance with Federal Emergency Management Agency (FEMA) guidelines in order to maximize recovery of reimbursable expenses. This task shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished.
- D. The CONTRACTOR may be required, at the AUTHORITY'S discretion, to be under the direction of an agent of the AUTHORITY.
- E. While intended to cover debris management needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to Palm Beach County, Florida. The planning standards used for this project are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida. The AUTHORITY intends to enter into contingency Agreement(s) as further defined herein, to provide emergency debris removal and disposal services as required by the AUTHORITY.

2. INTRODUCTION:

- A. The AUTHORITY'S disaster recovery planning includes considerations for removing and processing the volumes and types of debris expected to be generated by a major disaster such as a hurricane or major flood and includes procedures for disposing of that debris. The planning approach is formulated in part on the concept of strategic pre-positioning of plans and resources necessary for timely, safe, coordinated recovery operations, including removal of debris from public property and rights-of-way throughout Palm Beach County using a combination of county, municipal, and CONTRACTOR forces.
- B. If activation is required, the AUTHORITY intends to activate contracts on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY intends to activate the CONTRACTORS in the order of final ranking as best meets the needs of the AUTHORITY. The AUTHORITY reserves the right in its sole and unfettered discretion, to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the

circumstance(s), the event, or any other condition which may warrant such action.

- C. The AUTHORITY envisions the need for four (4) CONTRACTORS to carry out the debris removal and disposal work throughout Palm Beach County. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and to cover the expenses associated with a major recovery operation prior to the initial AUTHORITY payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel, comprehensive debris removal, volume reduction operations plan, and demonstrable experience in major disaster recovery projects.
- D. The Agreement(s) to be awarded under this RFP will be contingency Agreement(s) that will be activated only in the face of an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until the Agreement is activated either in anticipation of a natural disaster or immediately after such disaster.
- E. The CONTRACTOR who receives an Agreement for the work, will be required to participate in certain AUTHORITY directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the AUTHORITY.
- F. The AUTHORITY does not guarantee a CONTRACTOR will be activated if awarded an Agreement.

3. PLANNING STANDARD FOR DEBRIS REMOVAL AND DISPOSAL:

The AUTHORITY'S goal is to complete the debris removal and disposal process in 120 days following the storm event. This assumes that the entire area of the county will be accessible within that period. Due to the low elevation and potential for flooding, some areas might not be accessible for several weeks after a major natural disaster. The CONTRACTOR must be aware that it might not be possible to initiate operations in all parts of the county simultaneously immediately after a storm.

4. DEBRIS MANAGEMENT:

- A. Planning for debris management operations is a function of the AUTHORITY as a supporting agency to the Palm Beach County Department of Engineering and Public Works. The AUTHORITY'S Emergency Management Coordinator will direct the debris removal and disposal operations.
- B. In addition to using AUTHORITY forces and equipment, the AUTHORITY intends to execute four (4) debris removal and disposal Agreements on a contingency basis for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the AUTHORITY in the aftermath of a major disaster. Each CONTRACTOR holding a debris removal and disposal Agreement will serve as a General CONTRACTOR for the purpose of debris removal and disposal operations and will be able to use his/her own and subcontractor resources to meet the obligations of the Agreement. It is anticipated, but not required, that the CONTRACTOR will use both local and non-local subcontractors.
- C. When a major disaster occurs or is imminent, the AUTHORITY intends to contact the highest

EXHIBIT "A"

two (2) or three (3) ranked CONTRACTORS holding debris removal and disposal Agreements to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will generally be limited to debris in, upon, or brought to county residential private and public streets and roads, rights-of-way, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations. Disposal of debris will be at AUTHORITY approved TDMS or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all TDMS.

- D. When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order, to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane or major flood. Depending on the nature of the storm and circumstances, the AUTHORITY may activate more than one (1) CONTRACTOR. CONTRACTOR(S) will generally be activated in order of final ranking.
- E. Specific task orders will be issued to select CONTRACTORS based on the best interest of Palm Beach County. The AUTHORITY reserves the right to assign work or task orders to various CONTRACTORS based on capability. The AUTHORITY does not guarantee a cradle to grave pricing arrangement but reserves the right to pick and choose CONTRACTORS based on ranking.
- F. The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.
- G. The AUTHORITY will make every effort to identify strategically located public and private TDMS throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional public and private TDMS will be identified as needed.
- H. The CONTRACTOR will operate the public and private TDMS and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate TDMS. The CONTRACTOR is responsible for all activity at TDMS operated by their subcontractor and must have an employee on site at all times to oversee daily operations. **The locations of both publicly and privately owned sites currently under consideration are shown on Attachment B.** Additional public and privately owned TDMS may become available as plans develop. The availability of both private and public TDMS may change during the term of the Agreement.

EXHIBIT "A"

- I. The AUTHORITY may also establish designated homeowner drop-off sites on a public right-of-way (PROW) for communities. The CONTRACTOR will be responsible for removing all eligible debris from those approved designated locations at the direction of the Emergency Management Coordinator or designee.
- J. Curbside segregation of debris and disaster-generated or related wastes will be an element of the AUTHORITY'S disaster recovery program. The debris removal and disposal CONTRACTOR will be required to aid in the segregation and waste stream management processes. Any Household Hazardous Waste (HHW) encountered by the debris removal CONTRACTOR is to be set aside. HHW disposal will be the responsibility of the resident. The AUTHORITY will designate HHW drop-off locations.
- K. The following items are considered HHW for the purpose of this Agreement:
 - 1. Used Oil
 - 2. Batteries
 - 3. Paint
 - 4. Aerosol spray cans
 - 5. Pesticides
 - 6. Antifreeze
 - 7. Fluorescent light bulbs
 - 8. Propane tanks (household size)
- L. The CONTRACTOR will setup a lined containment area and separate any HHW inadvertently delivered to a TDMS.
- M. Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will be set aside for collection and disposal by a Hazardous Materials Removal and Disposal Contractor who will be selected by the AUTHORITY.
- N. Putrescible residential garbage will be collected by AUTHORITY franchise waste haulers and is not to be collected or transported by CONTRACTOR forces. The AUTHORITY may enter into a separate emergency debris removal agreements with each franchise hauler to operate their dedicated self-loading collection equipment within their Service Area for FEMA eligible storm debris removal.

5. SCOPE OF WORK/OVERVIEW:

This section is divided into three (3) subsections:

- 5.1 **Debris Removal and Disposal Operations** from residential public and private streets, roads and rights-of-way and delivered to a TDMS designated by the Authority.
- 5.2 **TDMS Operations** which includes daily operations as well as reclamation of the site to its pre-storm condition or as directed by the AUTHORITY Emergency Management Coordinator
- 5.3 **Processing, Loading and Hauling Material** from TDMS to final destination.

EXHIBIT "A"

- A. Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, timeframe for completion, rates to be used, etc. Any job with requirements or rates not covered by this Proposal will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest at the CONTRACTOR'S expense.
- B. The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.
- C. The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.
- D. The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY's Director, Customer Information Services prior to issuance of the first Task Order.
- E. The quantity of work required to complete the Agreement resulted from this RFP is estimated. The actual effort required may be more or less than the estimated amount shown in the Proposal Form 3 – Price Proposal. Payment will be made at the unit rates proposed. The output will be verified by the AUTHORITY's Director, Customer Services in the daily operational report. Should hourly rates be used to pay for certain equipment other than preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.
- F. The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no

additional cost to the AUTHORITY.

- G. The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- H. The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

6. DEBRIS REMOVAL AND DISPOSAL OPERATIONS

6.1 General:

- A. The purpose of this section is to define the requirements for debris removal and disposal operations after any catastrophic disaster within Palm Beach County. The AUTHORITY may designate zones for collection and disposal locations for debris collected. CONTRACTORS will be tasked with a service area(s) for this specific work immediately after the activation of the Agreement.
- B. For work performed on a Time and Materials basis, all hourly equipment rates shall include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, and all other costs associated with the equipment including labor and operator.

6.2 Services:

- A. The CONTRACTOR shall provide equipment, operators, and laborers for debris removal operations. The CONTRACTOR shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, and repairs) all equipment under this Agreement.
- B. All rates are to include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and all other costs.
- C. The work shall consist of clearing and removing disaster generated debris as directed by the AUTHORITY Emergency Management Coordinator. CONTRACTOR shall provide collection equipment the day following a natural disaster or as directed by the AUTHORITY and shall provide equipment sufficient to collect a minimum of 50,000 cubic yards of debris per day within ten (10) calendar days of collection commencement (Past AUTHORITY natural disaster cleanup records show that ten (10) days' following disaster, 95,000-126,000 cubic yards of debris collected per day). Failure to provide sufficient equipment necessary to collect required amount may result in the AUTHORITY entering into a separate agreement with another contractor for collection services.

6.2.1 Removal of Hazardous Leaning Trees and Hanging Limbs

- a) Under this contract, work shall consist of all labor, equipment, fuel, and

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miscellaneous costs necessary to remove all hazardous trees twelve inches (12") or greater in diameter, measured three feet (3') from the base of the tree or chest height and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way. Further, debris generated from the removal of hazardous trees and hanging limbs two inches (2") or greater existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Hazardous leaning trees less than twelve inches (12") in diameter, measured three feet (3') from the base of the tree or at chest height, will be flush cut, and placed on the public right-of-way to be removed as vegetative debris. The AUTHORITY will not compensate the CONTRACTOR for leaning trees less than twelve inches (12") in diameter on a unit rate basis.

- b) Removal and transportation of hazardous trees twelve inches (12") or greater in diameter and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of leaning trees will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for leaning or hazardous trees to be removed and eligible for reimbursement, the tree must satisfy a minimum of one (1) of the following requirements:
 - i) The tree is leaning in excess of 30° degrees in a direction that poses an immediate threat to public health, welfare, and safety.
 - ii) The tree is dead, twisted, or mangled as a direct result of the storm and a certified arborist can attest to the fact that the tree will die and potentially create a falling hazard to the public.

6.2.2 Removal of Hazardous Stumps

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous uprooted stumps 24 inches or greater in diameter, measured 24 inches from the base of the tree existing in private and public right-of-way. Further, debris generated from the removal of uprooted stumps existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Stumps measured 24 inches from the base of the tree and less than 24 inches in diameter will be considered normal vegetative debris and removed in accordance with 3.1.2. The AUTHORITY will not compensate hazardous stumps less than 24 inches in diameter on a unit rate basis and instead will be considered normal vegetative debris. The diameter of stumps less than 24 inches will be converted into a cubic yardage volume based on the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines) and removed under the terms and conditions of 2.6.2.
- b) Removal and transportation of hazardous uprooted stumps existing in the private and public right-of-way and private property will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of hazardous stumps will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for hazardous stumps

to be removed and eligible for reimbursement, the stump must satisfy the following requirement:

- (i) Over 50% of the tree crown is damaged or broken and heartwood is exposed.
- (ii) Tree stumps that are not attached to the ground will be considered normal vegetative debris and subject to removal under the terms and conditions of 2.1. The cubic yard volume of the unattached stump will be based off of the diameter conversion using the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines).

The AUTHORITY or its representative will measure and certify all stumps before removal.

6.2.3 Collection of Storm Generated Residential Vegetation and Construction and Demolition Debris:

- a) It is the AUTHORITY'S goal to ensure that Vegetation and Construction/Demolition debris remain separate task orders for the collection of Vegetation and Construction loads. Mixing of loads by the CONTRACTOR at the road right of way will not be tolerated.

Work may include:

- (i) First pass to clear debris from emergency evacuation routes, access roads to critical facilities and all primary roadways.
 - (ii) Clearing debris from residential private and public road right of ways.
 - (iii) Loading the debris.
 - (iv) Hauling the debris to an approved AUTHORITY TDMS or an authorized private construction demolition debris recycling facility or landfill.
 - (v) Dumping the debris at the TDMS or direct haul to an Authority permitted approved private Construction and Demolition Debris (C&D) recycling facility or Authority authorized landfill.
- b) Debris delivered to a TDMS, private C&D recycling facility or authorized landfill will be paid based on the per cubic yard price according to the Proposal Form 3 – Price Proposal.

6.2.4 Hourly Rate Clearing:

- a) From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:
 - (i) Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.
 - (ii) Perform emergency removal of debris if needed for life-saving measures.
 - (iii) Conduct daily briefings with debris managers and other officials to update progress and discuss issues.
 - (iv) Develop a traffic control plan along potential haul routes and at debris

management and disposal sites.

- b) The CONTRACTOR shall not move from one designated Collection Zone to another area without prior approval from the AUTHORITY's Director, Customer Information Services or designee. CONTRACTORS and/or subcontractors that move to a designated Collection Service Area without prior AUTHORITY approval may be terminated immediately. The AUTHORITY reserves the right to relocate CONTRACTOR to other Collection Service Areas based on need and ability to perform required work at an acceptable level. The AUTHORITY reserves the right to immediately terminate CONTRACTOR and any subcontractor who fails to provide service in strict accordance with guidelines set forth by FEMA and the AUTHORITY.
- c) The AUTHORITY or designee shall forward all claims of damage to the CONTRACTOR daily. CONTRACTOR shall provide all contact information, including name, phone number, cellular phone number, fax number and email address, for personnel responsible for resolving all claims of damage. CONTRACTOR must respond to all claims of damage within 24 hours and resolve within ten (10) calendar days. Mailboxes must be repaired or replaced within two (2) calendar days. CONTRACTOR is responsible for all damage caused by his crew and/or subcontractors in the performance of debris removal.
- d) In the event the CONTRACTOR fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided in this Agreement, the AUTHORITY or designee may arrange for the repairs and assess the CONTRACTOR for the cost of the repairs and any applicable administrative charges. Any disputes as to damage responsibility will be presented to the Director, Customer Information Services or designee for review. The decision of the Director, Customer Information Services or designee will be final.

6.3 Equipment:

- A. All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:
 - 1. Fencing must be permanently attached to one side of the truck bed.
 - 2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
 - 3. Fencing must extend to the bottom of the bed.
 - 4. After loading, bottom of fencing shall be tight against the bed of the truck and secured at a minimum of two locations.
 - 5. Solid iron metal bars must be secured to both sides of the fencing.
 - 6. There shall be no hand loaded equipment allowed.

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- B. The AUTHORITY or designee shall complete certifications indicating the type of vehicle, make and model, license plate number, equipment number, and measured maximum volume, in cubic yards, of the load bed of each piece of equipment utilized to haul debris. The measured volume of each piece of equipment shall be calculated from actual internal physical measurement performed and certified by the CONTRACTOR. Maximum volumes may be rounded up to the nearest cubic yard. The reported measured maximum volume of any load bed shall be the same as shown on the placards affixed to each piece of equipment. The AUTHORITY reserves the right to re-measure trucks and trailers at any time to verify reported capacity. If a truck and/or trailer are re-measured and the yardage capacity is determined to be lower, the lower yardage volume will be retroactive to the initial load and total volume adjusted accordingly.
- C. All trucks and trailers utilized in hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. If installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and remarked. All extensions to the bed are subject to acceptance or rejection at the sole discretion of the AUTHORITY or designee.
- D. Trucks or equipment designated for use under this Agreement shall not be used for any other work during working hours. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement. Under no circumstance will the CONTRACTOR mix debris hauled for others with debris hauled under this Agreement. Failure to comply will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to provide any additional emergency debris collection services. Any and all unapproved changes to placard will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to perform any additional emergency debris collection services.

6.4 Securing Debris

The CONTRACTOR shall be responsible for properly and adequately securing debris on each piece of equipment utilized to haul debris. Prior to leaving the loading site, the CONTRACTOR shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted during loading and secured during transport. Tarps or other coverings shall be provided by the CONTRACTOR to prevent materials from falling or being blown from the bed. Loads not properly tarped or otherwise covered will not be allowed to dispose at any AUTHORITY approved TDMS which may result in non-payment to CONTRACTOR.

6.5 Equipment Signage

Prior to commencing operations, the AUTHORITY or designee shall affix to each piece of equipment, signs or markings indicating the Owner Operator's name and a unique equipment identification number. One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Each operator shall keep AUTHORITY certification with them at all times. Placards must remain on both sides of equipment.

6.6 Other Considerations

- A. The CONTRACTOR shall assign and provide an Operations Manager (OM) to the AUTHORITY TDMS to serve as the principal liaison between the AUTHORITY Director, Customer Services or designee and the CONTRACTOR'S forces. The assigned OM must be knowledgeable of all facets of the CONTRACTOR'S operations and have authority in writing to commit the CONTRACTOR. The OM shall be on call 24 hours per day, seven (7) days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for onsite accommodations. This linkage shall provide immediate contact via cell phone, Fax machine, and have Internet capabilities. The OM will participate in daily meetings and disaster exercises, functioning as a source to provide essential element information. The OM will report to the AUTHORITY Director, Customer Services or designee. This position will not require constant presence; rather the OM will be required to be physically capable of responding to the AUTHORITY Emergency Management Coordinator within 30 minutes of notification.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.
- C. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- D. Payment for debris hauled will be based on the quantity of debris hauled in cubic yards. Debris hauled to a TDMS will require a validated load ticket. Drivers will be given an electronic load tickets at the loading site by an AUTHORITY loading site monitor. The quantity of debris hauled will be estimated in cubic yards at the TDMS by an AUTHORITY TDMS monitor. The estimated quantity will be recorded on the electronic load ticket. The AUTHORITY TDMS monitor will retain one copy of the paper load ticket and the driver will retain the remaining copies of the load ticket. Debris being hauled to a permanent landfill will be paid based on cubic yards recorded on an approved electronic or paper load ticket. Payment will be made against the CONTRACTOR'S invoice once site monitor and CONTRACTOR load tickets and/or scale tickets match. Load tickets not properly completed and signed will not be paid.

7. TEMPORARY DEBRIS MANAGEMENT SITES (TDMS) OPERATIONS**7.1 General**

- A. The purpose of this section is to define the requirements for TDMS Operations after any catastrophic disaster within Palm Beach County.
- B. The CONTRACTOR shall use only TDMS designated by the AUTHORITY Emergency Management Coordinator.

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- C. The TDMS foreman shall direct all vehicular traffic and load drop-off operations. Different types of debris shall be kept in separate piles at the TDMS. At a minimum, one flag person shall be posted at each TDMS for traffic control and to direct unmixed loads to proper location (by debris type) to be offloaded. CONTRACTOR shall be responsible for sorting and proper placement of all loads not dumped in appropriate location which results in mixing the once separated debris at no charge to the AUTHORITY.
- D. The CONTRACTOR shall begin grinding vegetative debris within five (5) calendar days of TDMS opening date and removing mulch/wood chips within ten (10) calendar days of site opening date. It is very important your plan provides specific information for the final disposal destination location of the mulch / wood chips removed from the public or private TDMS. The CONTRACTOR shall begin removal of Construction and Demolition/mixed debris from TDMS to an approved final destination within five (5) days of site opening date.

7.2 TDMS Services

7.2.1 Site Setup/Preparation and Site Closeout/Restoration Site setup/preparation and site closeout/restoration shall be compensated on a time and materials basis in accordance with the hourly rates provided in the Proposal Form 3 – Price Proposal. Site set-up/preparation/closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, limerock or crushed concrete access roads, seeding, and any other similar activity necessary to make the site usable for its intended purposes and to return the site to its original condition. Do not include any materials in calculating the hourly rates in the Proposal Form 3 - Price Proposal. Important- Phase I TDMS Reclamation is included in the 2.0 cubic yard price. Phase I Reclamation requires the contractor to remove all debris from the TDMS including small particles mixed with soil and grading the entire area. The only site closeout cost will be removal of road base material and seeding as approved by the Authority.

7.2.2 TDMS Operations and Material Processing

- a. TDMS operations and material processing shall be compensated in accordance with the unit prices provided in the Proposal Form 3 - Price Proposal. The CONTRACTOR shall provide equipment, operators, and laborers for TDMS operations as specified by Task Order. Unit prices provided in the Proposal Form 3 - Price Proposal, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance) all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each TDMS. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm

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identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the TDMS. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and any other costs. The work shall consist of managing the operations of a TDMS and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator

- b. The AUTHORITY plans to use two types of TDMS.
 - 1. Vegetative TDMS will be devoted to the reduction of clean woody debris by either burning or grinding. The AUTHORITY expects the material to be recycled and or beneficially re-used if processed by grinding. It is important to provide a detailed plan on how this material will be recycled or beneficially reused after grinding / reduction.
 - 2. Depending upon the size and type of devastation the AUTHORITY may require a separate Construction & Demolition (C&D) staging area, mixed debris staging area and a separate Household Hazardous Waste staging area. The AUTHORITY requests that PROPOSER implements recycling and or reduction programs to minimize the quantity of construction debris material to be land filled.
- c. Material coming into the Vegetative or C&D TDMS will be measured and paid for by the cubic yard according to the Proposal Form 3 – Price Proposal. Material removed and transported from a C&D TDMS will be measured and paid by the cubic yard according to the Proposal Form 3 – Price Proposal.
- d. Locations of all TDMS will be approved by the AUTHORITY. The AUTHORITY Emergency Management Coordinator must approve site improvements before work begins and any costs, other than those in the Proposal Form 3 – Price Proposal, that might have been negotiated under a Task Order shall be documented for payment.
- e. Material processed at a TDMS by either grinding or burning will be measured using cubic yards from incoming load tickets. Material entering a TDMS will be deposited in manageable piles.

7.3 Reporting

The CONTRACTOR shall submit a report to the AUTHORITY Emergency Management Coordinator or designee by close of business each day of the term of the Task Order. Each report shall contain, at a minimum, the following information:

- 1. Contractor's Name
- 2. Contract Number

3. Daily and cumulative hours for each piece of equipment, *if appropriate*
4. Daily and cumulative hours for personnel, by position, *if appropriate*
5. Volumes of debris handled

Failure to provide audit quality information by 5:00 p.m. of the following day of operation will subject CONTRACTOR to non-payment in each instance at the sole discretion of the AUTHORITY.

7.4 Other Considerations

- A. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. In the event a TDMS must be closed due to CONTRACTOR equipment or operational failures, CONTRACTOR shall be liable for liquidated damages in the amount of \$25,000.00 per day for every day the site has to remain closed.

7.5 Debris Clearance (for access) from Right-of-Ways and Public Property

- A. The AUTHORITY provides support to Palm Beach County Government for Debris Management, including the clearance (moving debris from the middle of the road, etc.) of debris from right-of- ways and public property. Palm Beach County intends to perform debris clearance for access with its own forces or under existing contractual Agreements between the County and local firms. However, in a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner.
- B. This debris clearance is to be considered supplemental and optional service. It is anticipated that debris clearance activities would be conducted, if needed, on a time and material basis using the rates in the Proposal Form 3 – Price Proposal.

8. PROCESSING, LOADING AND HAULING MATERIAL:

CONTRACTOR shall provide all necessary labor, material and equipment to process, load and haul wood chips from TDMS in Palm Beach County to final destination for disposal. CONTRACTOR shall provide all necessary labor, material and equipment to load and haul construction and demolition debris and/or mixed debris from TDMS as directed by the AUTHORITY. The AUTHORITY reserves the right to contract with other firms to process, load and haul wood chips and construction and/or mixed debris to a final destination as may best meet the needs of the AUTHORITY. All wood chips, construction and/or mixed debris shall be disposed of in accordance with all Local, State of Florida and Federal guidelines.

CONTRACTOR will provide detailed listing to the AUTHORITY of the following:

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch / reduced yard waste material generated at TDMS is disposed, to include

address/GPS location.

4. AUTHORITY will determine final private or public Construction/Demolition debris disposal/recycling facility.

9. MISCELLANEOUS REQUIREMENTS

9.1 TDMS Foreman

- A. The TDMS foreman must be an employee of the CONTRACTOR and is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety.
- B. The TDMS foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Services or designee.

9.2 TDMS Night Foreman

- A. The TDMS night foreman must be an employee of the CONTRACTOR and is responsible for managing all night operations approved by the AUTHORITY.
- B. The TDMS night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Information Services or designee.

9.3 TDMS Management Plan

- A. Once the TDMS is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.
- B. Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:
 1. Access to site
 2. Site preparation -clearing, erosion control, and grading
 3. Traffic control procedures
 4. Safety
 5. Segregation of debris
 6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
 7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
 8. Specific plan including and location for the final disposal destination of the mulch/wood chips generated at the public or private TDMS.

9.4 Inspection Tower

The CONTRACTOR shall construct an inspection tower at each TDMS within three (3) calendar days of natural disaster. The tower shall be constructed using pressure treated

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wood or steel scaffold. The floor elevation of the tower shall be 10-feet above the existing ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Inspection towers must provide a dry area for employees and meet all FEMA and OSHA requirements.

9.5 Grinding Operation

The CONTRACTOR shall have grinder(s) on site and in operation within five (5) calendar days following a natural disaster. Failure to provide sufficient grinding capacity to accommodate expected incoming volumes and allow site to operate in an efficient manner within five (5) calendar days shall result in liquidated damages of \$10,000 per day. There shall be no period longer than 24 hours in which grinding activity may stop due to equipment or operational failure. Failure to provide back-up equipment within 24 hours shall result in liquidated damages of \$2,000 per hour per approved hours of grinding operation per day until grinding activity resumes.

9.6 Household Hazardous Waste Containment Area

The CONTRACTOR shall construct a hazardous material containment area at each TDMS. The area shall be 30' x 30'. The perimeter shall be lined with hay bales and staked in place. The area shall be lined with a heavy gage plastic to provide a waterproof barrier. Additional plastic sufficient to cover the area is required to prevent rain from entering the containment area. Site run-off must be redirected from the containment area by site grading.

10. PERFORMANCE OF CONTRACTOR

- A. It is the intent of this Agreement to ensure that the CONTRACTOR provides a timely quality level of services. To this end, all complaints received by the Emergency Management Coordinator or designee and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.
- B. The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:
 - 1. Failure to open pre-storm identified sites within three (3) calendar days of after being tasked by the AUTHORITY liquidated damages of \$10,000 per day for each day not opened.
 - 2. Closure of TDMS due to CONTRACTOR equipment or operational failures liquidated damages of \$25,000 per day, for each day site must remain closed.
- C. Failure to provide back-up grinder(s) within 24 hours of equipment breakdown liquidated damages of \$2,000 per hour per approved grinding hours of operation per day.
- D. CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each occurrence of the following infractions:

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1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.
 2. Loads not properly tarped or otherwise covered.
 3. Mixing debris hauled from other sources with debris hauled under this Agreement.
 4. Mixing vegetation debris with C & D material.
- E. CONTRACTOR may be immediately terminated and not paid for the following:
1. Collection of any non-eligible, non-AUTHORITY approved stumps or debris.
 2. Moving to another designated Collection Service Area without prior AUTHORITY approval.
 3. Failure to provide service in accordance with guidelines set forth by FEMA and the AUTHORITY.
 4. Soliciting work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement.
 5. Alteration of placards placed on certified trucks and/or trailers.

Any disputes regarding Performance of Contractor will be presented to the Emergency Management Coordinator or designee for review. The Emergency Management Coordinator or designee shall complete review and make determination within three (3) calendar days. Decisions of the Emergency Management Coordinator or designee shall be final.

FEE SCHEDULE

PROPOSAL FORM 3 – PRICE PROPOSAL

PART A – VOLUME BASED PRICING FOR 3,000,000 CUBIC YARD (CY) DEBRIS DISASTER

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated TDMS.				
A. Vegetation	2,500,000	CY	\$8.25	\$20,625,000.00
B. Construction Debris / Mixed Debris	500,000	CY	\$8.25	\$4,125,000.00
2.0 TDMS operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and Phase I Reclamation.	3,000,000	CY	\$0.25	\$750,000.00
3.0 Processing of debris through grinding and/or chipping. Will honor for C&D reduction via compaction.	2,500,000	CY	\$3.40	\$8,500,000.00
4.0 Loading, hauling and disposing wood chips to final destination. (This rate includes disposal cost)	1,000,000	CY	\$8.75	\$8,750,000.00
5.0 Loading and hauling of construction debris and/or mixed debris from TDMS to a permitted C&D recycling facility or any other designated Disposal Facility. (This rate shall not include disposal cost). Based on miles from TDMS to final destination- 1 way.				
A. 0 ≤ 20 miles	500,000	CY	\$4.40	
B. > 20 ≤ 50 miles	500,000	CY	\$5.50	
C. > 50 ≤ 100 miles	500,000	CY	\$7.80	
AVERAGE: (Item 6.0 A-C)			\$5.90	
AVERAGE: (Item 5.0 A-C) X 500,000 CY =				\$ 2,950,000.00
TOTAL PROPOSAL PRICE: (Items 1.0 - 5.0)				\$ 45,700,000.00

PROPOSER MUST PROVIDE PRICE FOR ALL LINE ITEMS 1 THRU 6. FAILURE TO DO SO MAY RENDER YOUR PROPOSAL TO BE DEEMED NON-RESPONSIVE.

Unit Prices, unless otherwise indicated, shall include all labor (operators, laborers, supervisors) and materials including but not limited to: supplies, equipment maintenance, repairs, repair parts, fuels, lubricants, cellular phones, transportation, and housing, if required, necessary to accomplish the project. The quantities and distributions are estimated for the purpose of making an award. Locations of sites, debris quantities, destinations, material densities, etc. may differ substantially in an actual disaster.

Assumptions: 3,000,000 cubic yards of debris consisting of 2,500,000 cubic yards of vegetation debris and 500,000 cubic yards of mixed debris.

PROPOSAL FORM 3 - PRICE PROPOSAL

PART B - HOURLY RATES

TDMS SET-UP AND CLOSURE AND DEBRIS CLEARANCE FOR ACCESS - OPTIONAL USE BY COUNTY AND OTHER GOVERNMENTAL ENTITIES			
EQUIPMENT AND LABOR RATES			
EQUIPMENT TYPE	HOURLY EQUIPMENT RATE	HOURLY LABOR RATE	TOTAL HOURLY RATE
Bobcat Loader	90.00	38.00	128.00
Crew Foreman w/ Cell Phone and Pickup	20.00	48.00	68.00
Dozer, Tracked, D5 or similar	100.00	38.00	138.00
Dozer, Tracked, D6 or similar	110.00	38.00	148.00
Dozer, Tracked, D7 or similar	125.00	38.00	163.00
Dozer, Tracked, D8 or similar	135.00	38.00	173.00
Dump Truck, 18 CY-20 CY	60.00	38.00	98.00
Dump Truck, 21CY-30 CY	70.00	38.00	108.00
Generator and Lighting (5 kW)	35.00	0.00	35.00
Grader w/ 12' Blade	150.00	38.00	188.00
Hydraulic Excavator, 1.5 CY	130.00	38.00	168.00
Hydraulic Excavator, 2.5 CY	140.00	38.00	178.00
Knuckleboom Loader	180.00	38.00	218.00
Laborer w/ Chain Saw	10.00	38.00	48.00
Laborer w/ small tools, traffic control, flag person	0.00	38.00	38.00
Lowboy Trailer w/ Tractor	100.00	38.00	138.00
Operations Manager w/ Cell Phone and Pickup	20.00	60.00	80.00
Pickup Truck, .5 Ton	20.00	0.00	20.00
Soil Compactor 81 HP+	65.00	38.00	103.00
Soil Compactor to 80 HP	55.00	38.00	93.00
Soil Compactor, Towed Unit	45.00	38.00	83.00
Truck, Flatbed	50.00	38.00	88.00
Tub Grinder, 800 to 1,000 HP	395.00	38.00	433.00
Water Truck	85.00	38.00	123.00
Wheel Loader, 2.5 CY, 950 or similar	120.00	38.00	158.00
Wheel Loader, 3.5-4.0 CY, 966 or similar	130.00	38.00	168.00
Wheel Loader, 4.5 CY, 980 or similar	140.00	38.00	178.00
Wheel Loader-Backhoe, 1.0-1.5 CY	85.00	38.00	123.00
Other - Please List			

Attach additional sheet with equipment type and labor rates, if needed

Push Crew: 1 loader or skidsteer, 2 sawhands, 1 foreman = \$345.00 per hour.

RFP No. 22-201/DL

- 40 -

January 2022

PROPOSAL FORM 3 – PRICE PROPOSAL

PART C – UNIT COST SCHEDULE

ITEM	HAZARDOUS STUMP REMOVAL, HAULING, AND DISPOSAL	UNIT	UNIT COST
1.	24-inch diameter to 48.99-inch diameter	Stump	\$350
2.	49-inch diameter and greater	Stump	\$460
3.	Stump Fill Dirt – Fill dirt for stump holes after removal	CY	\$20.00
HAZARDOUS HANGING LIMBS (HANGERS) To include removal of all hanging limbs. Limbs to be cut and placed on the right of way for collection as vegetative debris.			
4.	2-inch diameter and greater	Tree	\$90.00
HAZARDOUS TREE REMOVAL Trees to be flush cut at ground level and placed on the right of way for removal as vegetative debris.			
5.	6-inch diameter to 11.99-inch diameter	Tree	\$55.00
6.	12-inch diameter to 23.99-inch diameter	Tree	\$160
7.	24-inch diameter to 35.99-inch diameter	Tree	\$290
8.	36-inch diameter to 47.99-inch diameter	Tree	\$340
8.	48-inch diameter and greater	Tree	\$400

NOTE:

The following is information only and will NOT be considered in the evaluation of this RFP

The AUTHORITY reserves the right to use this contract to handle small quantities of debris removal and as support for our Franchise Contracts as needed. Below is a daily rate to remove debris. The AUTHORITY will pay for the disposal cost. There is no requirement to provide a rate, however if you do, we expect your company to honor this special service and respond within 48 hours at the rate below.

COLLECTION SERVICE ONLY	
EQUIPMENT	DAILY RATE (10 HRS/DAY)
Knuckleboom Loader and Operator	\$ 3,400.00

ATTACHMENT "A"

**SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY**

7501 North Jog Road
West Palm Beach, Florida 33412
Telephone: 561-640-4000 • Fax: 561-640-3400



**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No. _____

In accordance with _____ (Contractor) contract, with the Solid Waste Authority of PBC, Florida, (AUTHORITY) Agreement No. _____ for Hurricane/Disaster Debris Removal, Reduction, and Disposal dated _____ the AUTHORITY hereby requests and authorizes the services to be performed on the project as described below:

Project: _____

Specific Work to be performed: _____

Duration of Work (Include Start Date, End Date and Total Calendar Days): _____

Method of Payment: _____

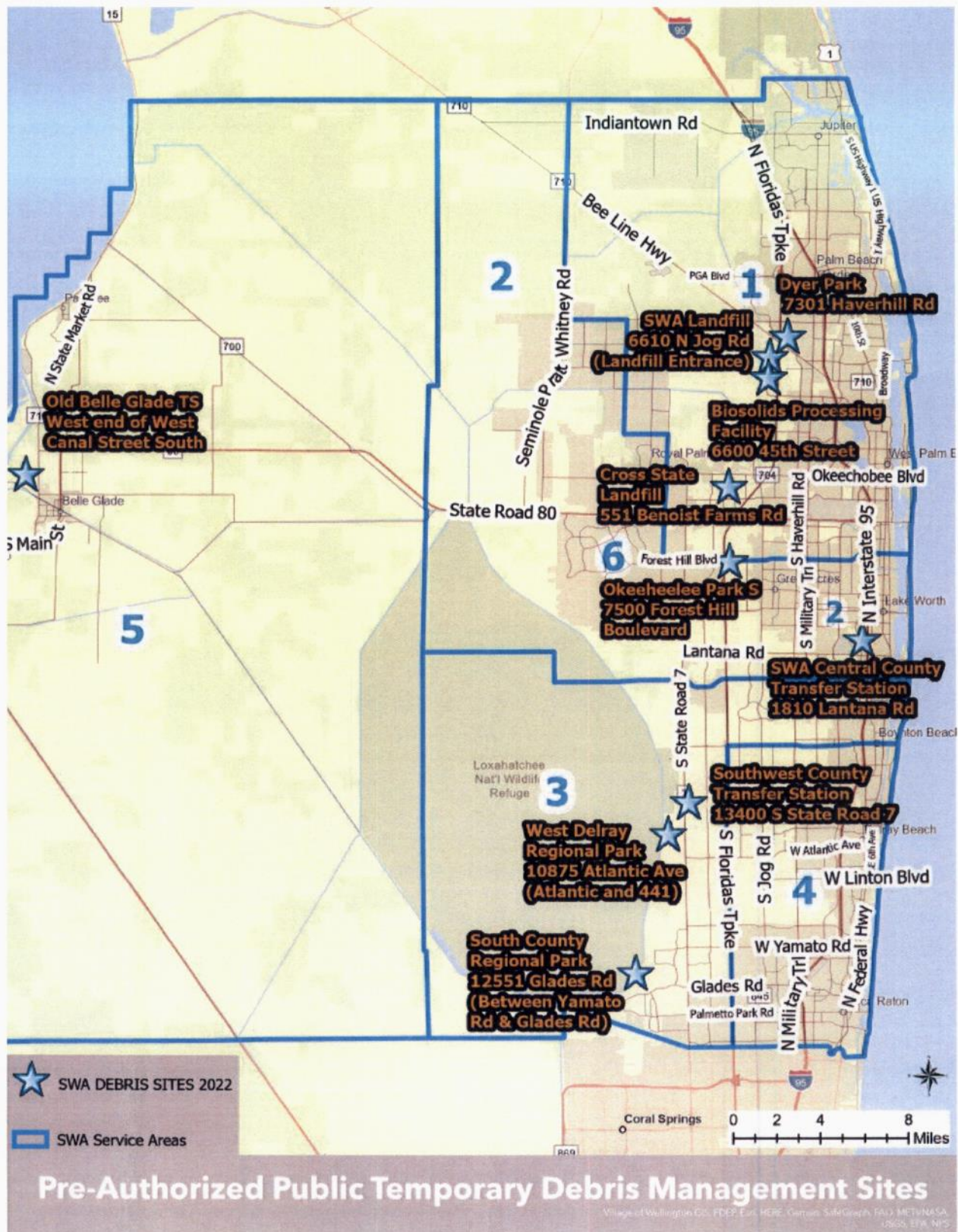
Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ **Date:** _____

AUTHORITY Signature: _____ **Date:** _____

SWA Use Only			
SWA Requestor/Monitor: _____		Date: _____	
SWA Dept. Director: _____		Date: _____	
Vendor No.: _____	Account No.: _____	Project: _____	
Purchasing: _____	Budget: _____	Accounting: _____	

ATTACHMENT "B"



ATTACHMENT "C"

PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE

The Public Assistance Program and Policy Guide, Version 4, Effective June 1, 2020 (see hyperlink below) is the most recent reference material that will provide additional information:

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf

PROJECT MANAGEMENT

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient close-outs of PA Program grants.

Record Keeping

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the "who, what, when, where, why, and how much" for each item of disaster recovery work. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;
- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

The Federal Office of Management and Budget requires grant recipients to maintain financial and program records on file for three years following final payment. Records of grant recipients may be subject to the provisions of the Single Audit Act, as described on page 117 of this guide. Applicants may refer to the Applicant Handbook, FEMA 323, for additional information regarding record-keeping.

ATTACHMENT "D"

MOBILIZATION SCHEDULE

CONTRACTOR shall commence mobilization of equipment, operators, and laborers immediately upon receipt of a Mobilization Task Order to meet the progress pattern set below.

	Category 1 & 2	Category 3	Category 4	Category 5
Within 24 hours	25%	25%	20%	15%
Within 48 hours	30%	30%	30%	25%
Within 72 hours	40%	40%	40%	40%
Within 96 hours	60%	60%	50%	50%
Within 5 days	100%	80%	60%	60%
Within 10 days		100%	80%	70%
Within 14 days			100%	80%
Within 20 days				100%

ATTACHMENT "E"

FHWA-1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (Included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate supervision and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting 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.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (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 (1.) of this section, in the sum of \$10 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 (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT "F"

BUY AMERICA REQUIREMENTS

Source of Supply – Steel and Iron (Federal Aid Contracts Only): For Federal-aid contracts, the Contractor will only use steel and iron produced in the United States, in accordance with the buy America provisions of 23 CFR 635.410. Contractor will ensure that all manufacturing processes for these materials occur in the United States. A manufacturing process is any process that modifies the chemical content, physical shape, size or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (*e.g.*, concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the compensation or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. The Contractor shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the finished product was manufactured in the United States in accordance with the requirements of this provision. Such certification shall also include: (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced with the United States except for minimal quantities of foreign steel and iron and specify the actual value of the product. Each such certification shall be furnished to the AUTHORITY prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, Contractor shall furnish invoices to document the costs of such material, and obtain the AUTHORITY'S written approval prior to incorporating the material into the project.

ATTACHMENT "G"

PERFORMANCE AND PAYMENT BOND

BY THIS BOND, WE, _____, Inc., as Principal and _____ a Corporation, as Surety, are bound to the Solid Waste Authority of Palm Beach County, hereinafter referred to as "Authority", in the sum of _____ Dollars (up to \$10,000,000), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Agreement dated _____, 20____ between Principal and Authority for Proposal of Hurricane/Disaster Debris Removal, Reduction and Disposal, **Agreement No. 22-201**, the Agreement being made a part of this bond by reference, in the time and in the manner prescribed in the Agreement, and;
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials and supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement, and;
3. Pays Authority all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Authority sustains because of a default by Principal under the Agreement, and;
4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement, and;
5. At completion of all work covered by Agreement and Final Payment by Authority to Principal then Principal will replace this Performance and Payment Bond with a Proposal Bond, in the amount of 5% of this Performance and Payment Bond, to be held by the Authority as a guarantee that Principal will provide to the Authority a Performance and Payment Bond in the amount of up to \$10,000,000 on the occasion of a subsequent Task Order in accordance with the above referenced Agreement;

then this bond is void; otherwise it remains in full force.

Surety shall be responsible for any and all liquidated damages imposed by the Authority for the referenced Agreement.

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or the changes does not affect Surety's obligation under this bond. Any increase in the total Agreement amount as authorized by the Authority shall accordingly increase the Surety's obligation by the same dollar amount of said increase. CONTRACTOR shall be responsible for notification to Surety of all such changes.

See subsection (2) of Section 255.05, Florida Statutes as amended for the notice and time limitations for claimants.

Signed and sealed this ____ day of _____, 20____.

PRINCIPAL: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

NOTE:

Date of Bond must not be prior to date of Agreement. If CONTRACTOR is a Partnership, all partners must execute bond.

IMPORTANT:

Surety companies executing bonds **must** appear and remain on the Treasury Department's most current list (Circular 570 as amended) during construction, guarantee and warranty periods, and be authorized to transact business in the State of Florida, and be pre-approved by the Authority.



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGREEMENT FOR

HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

DRC EMERGENCY SERVICES, LLC

AGREEMENT NO. 22-201D

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33412
(561) 640-4000**

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of APRIL 25th, 2022, (hereinafter referred to as the Agreement) by and between **Solid Waste Authority of Palm Beach County**, a dependent special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and **DRC Emergency Services, LLC** (hereinafter referred to as CONTRACTOR and when referred to collectively with AUTHORITY, the Parties), a Corporation, whose Federal Employer ID Number is **63-1283729**;

Whereas, in accordance with the AUTHORITY's Request for Proposals No. 22-201/DL, solicited to employ the services of the CONTRACTOR for the purpose of providing Hurricane/Disaster Debris Removal, Reduction and Disposal, and;

Whereas, CONTRACTOR represents it is qualified, capable and prepared to provide such services.

Now, therefore, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is acknowledged by the other, the parties hereto agree as follows:

ARTICLE 1 - EFFECTIVE DATE AND INCORPORATION OF RECITALS

The foregoing recitals are hereby incorporated herein by reference.

- 1.1 The Effective Date of this Agreement shall be **May 8, 2022** and the Initial Term of this Agreement is for three (3) years and shall expire on **May 7, 2025**, unless terminated earlier as provided for herein.
- 1.2 The AUTHORITY shall have the option of extending this Agreement for three (3) additional years, as approved by the AUTHORITY's Board or designee, in its sole and unfettered discretion, on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both Parties.
- 1.3 The continuance of this Agreement from year-to-year is contingent upon successful annual recertification of the CONTRACTOR's capabilities. The recertification process will be a review of the fiscal (bankruptcy, etc.), logistical (equipment availability, etc.), and moral (conviction for environmental crime, conviction for crime against a public entity, etc.) responsibility of the CONTRACTOR and a determination by the AUTHORITY, based on this review, of whether or not the CONTRACTOR continues to be a viable firm to provide the services described in this Agreement.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR shall perform the services as specifically stated in the Scope of Work, attached hereto and made a part hereof as Exhibit A, and/or as may be specifically designated and authorized by the AUTHORITY. Such authorizations will be referred to as Task Orders. Each Task Order shall set forth a specific scope of services, rate/amount of compensation, completion date, and other pertinent details of the task being authorized. The AUTHORITY, by virtue of this Agreement, gives the CONTRACTOR no guarantee of any work/services or any specific amount of work/services that may be accomplished during the period this Agreement is in full force and effect.

ARTICLE 3 - COMPENSATION

- 3.1 The AUTHORITY shall pay CONTRACTOR in accordance with the Fee Schedule, attached hereto and made a part hereof as Exhibit B. In addition, the Parties may negotiate a lump sum or not-to-exceed amount on a per-project basis on an individual Task Order.

- 3.2 The CONTRACTOR shall submit semi-monthly invoices for services rendered. All invoices must reference the Task Order number. Invoices shall include a statement of progress and appropriate audit quality detail to satisfy the Federal Emergency Management Agency (FEMA) requirements.
- 3.3 Payment of CONTRACTOR by AUTHORITY is not contingent upon the AUTHORITY being reimbursed by the Federal Emergency Management Agency (FEMA). Payment to CONTRACTOR will be made for any work directed by the AUTHORITY which is determined by Federal and State agencies to be ineligible for reimbursement.
- 3.4 Payment of invoices shall be within thirty (30) days after receipt of a correct, fully documented invoice. All invoices shall be delivered to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attn: Accounts Payable

- 3.5 CONTRACTOR will clearly mark its final/last billing with the words "Final Invoice". This will certify that all services have been fully performed under this Agreement and that all charges and costs have been invoiced to the AUTHORITY. Thereupon, this account will be closed and any additional charges or costs, not included in the Final Invoice, shall be waived by CONTRACTOR. The AUTHORITY shall not be liable for the payment of any such additional charges or costs not included in the Final Invoice.
- 3.6 The AUTHORITY will retain 5% of the payment under each Task Order until such time as the entire project is completed to the AUTHORITY's satisfaction and all subcontractors and any material suppliers verify that they have been paid.

ARTICLE 4 - INSURANCE

- 4.1 During the performance of the Services under this Agreement, CONTRACTOR shall maintain the following insurance policies written by an insurance company authorized to do business in Florida and acceptable to the AUTHORITY.
1. **General Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$1,000,000 for each occurrence.
 2. **Automobile Liability** Insurance with bodily injury limits of not less than \$5,000,000 for each person and not less than \$5,000,000 for each accident and with property damage limits of not less than \$5,000,000 for each accident.
 3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.
 4. **Excess Liability** Insurance with limits of not less than \$10,000,000 for each occurrence and annual aggregate.
- 4.2 Deductible amounts shall not exceed 5% of the total amount of required insurance in each category. Should any policy contain any unusual exclusions, said exclusions shall be so indicated on the certificate(s) of insurance.
- 4.3 CONTRACTOR shall furnish AUTHORITY **Certificates of Insurance**, which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days**

after written notice has been given to the AUTHORITY. CONTRACTOR shall include AUTHORITY as an **Additional Insured** on the General Liability and Automobile Liability insurance policy required by this Agreement. All of CONTRACTOR'S subcontractors shall be required to include AUTHORITY and CONTRACTOR as **Additional Insureds** on all of their liability insurance policies.

- 4.4 CONTRACTOR shall ensure that CONTRACTOR's naming of the AUTHORITY as an additional insured on its General Liability and Automobile Liability insurance policies pursuant to this Agreement shall afford coverage for the negligent, reckless, intentionally wrongful or willful acts of CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement.
- 4.5 In the event that subcontractors used by the CONTRACTOR do not have insurance, or do not meet the required insurance limits herein, CONTRACTOR shall indemnify and hold harmless the AUTHORITY for any claim(s) in excess of the subcontractor's insurance coverage.
- 4.6 The CONTRACTOR shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

- 5.1 The CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the Services performed pursuant to this Agreement as is ordinarily provided by comparable, qualified professionals under similar circumstances. The CONTRACTOR shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.
- 5.2 The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONTRACTOR agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

The CONTRACTOR shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the Agreement.

6.3 SURVIVAL

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 - INDEPENDENT CONTRACTOR

- 7.1 The CONTRACTOR is, and shall be, in the performance of all work services and activities performed under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the

AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

- 7.2 The CONTRACTOR does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 8 - AUTHORITY TO CONDUCT BUSINESS

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all requirements in this Agreement.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the Services, the CONTRACTOR will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

ARTICLE 10 - SUB-CONTRACTING

- 10.1 The AUTHORITY reserves the right, in its sole and unfettered discretion, to accept the use of a subcontractor or to reject the selection of a particular subcontractor under this Agreement.
- 10.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

The AUTHORITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the AUTHORITY will provide an exemption certificate to CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the AUTHORITY, nor shall the CONTRACTOR be authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the AUTHORITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of the Solid Waste Authority of Palm Beach County.

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONTRACTOR, including existing reports, studies, financial information, and other required data that are available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

- 14.1 The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR: a) fails to satisfactorily perform any provisions of this Agreement; or b) fails to make progress so as to endanger performance under the terms and conditions of this Agreement; or c) repeatedly fails to perform; or d) does not remedy any such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONTRACTOR, the AUTHORITY may, in its sole

and unfettered discretion, procure goods and/or services similar to those required under this Agreement and the CONTRACTOR shall be liable for any excess costs incurred due to this action.

- 14.2 If it is determined that the CONTRACTOR was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of the CONTRACTOR), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

- 15.1 The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate this Agreement, in whole or in part, for the convenience of the AUTHORITY. The Director of Purchasing Services shall give five (5) business days prior written Notice of Termination to the CONTRACTOR, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONTRACTOR has the right to withdraw, without adverse action by the AUTHORITY, from the entire Agreement.
- 15.2 Unless directed differently in the Notice of Termination, the CONTRACTOR shall incur no further obligations in connection with the terminated work and shall stop work to the extent specified on the date given in the Notice of Termination. Additionally, unless directed differently, the CONTRACTOR shall terminate outstanding orders and/or subcontracts related to the terminated work.
- 15.3 Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination specified in the Notice of Termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

- 16.1 Neither the AUTHORITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 17 – JURISDICTION, VENUE, WAIVER OF JURY TRIAL AND REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located exclusively in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial failure by any party to exercise any right, power, or remedy hereunder, shall preclude that party from exercising that right, power or remedy in the future. **THE AUTHORITY AND CONSULTANT FREELY AND VOLUNTARILY AGREE TO WAIVE ITS RESPECTIVE RIGHT TO A JURY TRIAL ON ANY ISSUE(S) SO TRIABLE.**

ARTICLE 18 – COMMERCIAL NON-DISCRIMINATION POLICY

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it will comply with the AUTHORITY's Commercial Non-Discrimination Policy, as described in Section 6.3 of the AUTHORITY's Purchasing Manual, including subsequent amendments thereto, if any. As part of such compliance, the CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, gender, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONTRACTOR retaliate against any person for reporting instances of such discrimination. The CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the AUTHORITY's relevant marketplace in Palm Beach County. The CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the CONTRACTOR from participating in AUTHORITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The CONTRACTOR agrees and understands that the provisions of Section 6.3 of the AUTHORITY's Purchasing Manual are incorporated herein by reference and that the CONTRACTOR is familiar with the contents of same.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further or subsequent breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any further or subsequent default or breach.

ARTICLE 20 - SEVERABILITY

- 20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 20.2 The provisions of this section shall not prevent the entire Agreement from being void if a provision which is of the essence of the Agreement is determined to be void.

ARTICLE 21 - ENTIRETY OF AGREEMENT AND MODIFICATION

The AUTHORITY and the CONTRACTOR agree that this Agreement, including Exhibits and Attachments, and any matters incorporated by specific reference set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the AUTHORITY and CONTRACTOR pertaining to the services, whether written or oral. None of the provisions or terms and conditions contained in this Agreement may be added to, amended, modified, superseded or otherwise altered except by written instrument executed by the parties thereto.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONTRACTOR each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party and its partners, successors, executors, administrators, assigns and legal representative. CONTRACTOR shall not assign this Agreement without the prior express written approval of the AUTHORITY in its sole discretion via executed amendment.

ARTICLE 23 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - TRUTH-IN-NEGOTIATION CERTIFICATE

- 24.1 Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of the Agreement.
- 24.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this 'Certificate' within one (1) year following payment.

ARTICLE 25 - OWNERSHIP OF DOCUMENTS

CONTRACTOR shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the AUTHORITY for its use and/or distribution as may be deemed appropriate by the AUTHORITY in its sole and unfettered discretion.

ARTICLE 26 - PUBLIC RECORDS, ACCESS AND AUDITS

- 26.1 It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.

26.2 DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

RECORDS MANAGER

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

7501 NORTH JOG ROAD

WEST PALM BEACH, FL 33412

561-640-4000 EXT. 4606

RECORDSCUSTODIAN@SWA.ORG

- 26.3 The CONTRACTOR shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>) after completion or termination of this Contract. Upon AUTHORITY'S request, CONTRACTOR shall provide AUTHORITY with access to such records during normal business hours at a location within Palm Beach County for purposes of inspection or audit.
- 26.4 Notwithstanding anything herein to the contrary, the CONTRACTOR expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Contract; ii) acting on behalf of the AUTHORITY in the performance of this Contract; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.
- 26.5 Any public records requests directed to, or related in any way to this contract shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager, they shall immediately notify the CONTRACTOR and the CONTRACTOR must provide the records or allow access to the records within a reasonable time. A CONTRACTOR who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.
- 26.6 Therefore, the CONTRACTOR is required to:
- 1) Keep and maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
 - 2) Upon AUTHORITY's request from the AUTHORITY's Records Manager, provide the AUTHORITY with a copy of the requested records to allow the records to be inspected or copied within a reasonable time on the same terms and conditions that the AUTHORITY would provide the records at a cost that does not exceed the cost provided by Florida law;
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the CONTRACTOR does not transfer the records to the AUTHORITY; and
 - 4) Upon completion of the Agreement, transfer at no cost to the AUTHORITY, all public records in possession of the CONTRACTOR or keep and maintain public records to the AUTHORITY upon completion or termination of the Agreement; the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the AUTHORITY, upon request from the AUTHORITY's Records Manager, either during performance of the Agreement or after termination or completion of the Agreement in a format that is compatible with the information technology systems of the AUTHORITY.
- 26.7 Failure of the CONTRACTOR to comply with these requirements shall be a material breach of this Contract.

26.8 CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency (FEMA) sub-grantee as required by 2 CFR 200.333. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.

26.9 In the event records retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with the State of Florida requirements.

ARTICLE 27 - INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

ARTICLE 28 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO AUTHORITY

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attention: Executive Director
Office No.: 561-640-4000 Fax No.: 561-640-3400

AS TO CONTRACTOR

DRC Emergency Services, LLC
111 Veterans Boulevard
Suite 401
Metairie, LA. 70005

Attention: Kristy Fuentes, Vice President/Secretary/Treasurer
Office No.: 888-721-4372 Fax No.: 504-482-2852 E-Mail: kfuentes@drcusa.com

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other

party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and AUTHORITY.

ARTICLE 29 - CONTRACT ADMINISTRATION

Services of CONTRACTOR shall be under the general direction of the **Chief Operations Officer**, or designee, who shall act as the AUTHORITY'S representative during the term of the Agreement.

ARTICLE 30 - KEY PERSONNEL

CONTRACTOR shall notify AUTHORITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. AUTHORITY has the right to reject any proposed changes in key personnel. The following personnel shall be considered key personnel:

Kristy Fuentes – Vice President of Compliance and Administration

Cell No.: 504-220-7682 E-Mail: kfuentes2drcusa.com

Evan Fancher – Regional Manager

Cell No.: 205-478-6400 E-Mail: efancher@drcusa.com

Lisa Garcia Walsh – Contract Manager

Cell No.: 504-715-9052 E-Mail: lwash@drcusa.com

Mark Stafford – Vice President of Response and Recovery

Cell No.: 504-415-7945 E-Mail: mstafford@drcusa.com

Joe Newman– Vice President of Operations

Cell No.: 214-930-9300 E-Mail: jnewman@drcusa.com

John Sullivan – President

Cell No.: 832-713-8234 E-Mail: jsullivan@drcusa.com

ARTICLE 31 – EQUAL BUSINESS OPPORTUNITY PROGRAM:

The Governing Board of the AUTHORITY has implemented the Economic Inclusion Policy administered by the Equal Business Opportunity (EBO) Program Office to ensure that all segments of its business population, including, but not limited to local, small, minority, and women-owned businesses, have an equitable opportunity to participate in the AUTHORITY'S procurement process, in accordance with Section 6.1 through 6.4 of the Purchasing Manual. Program tools and solicitation incentives are hereby referred to as the Affirmative Procurement Initiatives (API).

31.1 Affirmative Procurement Initiative (API):

The AUTHORITY has NOT applied an Affirmative Procurement Initiative to this Agreement.

ARTICLE 32 - SCRUTINIZED COMPANIES

32.1 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized

Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

- 32.2 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, this Agreement certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.
- If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

ARTICLE 33 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

- 33.1 The CONTRACTOR agrees that this Agreement constitutes an offer to all State and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONTRACTOR deem it in the best interest of their business to do so.
- 33.2 The Agreement in no way restricts or interferes with any State or local government agencies of the State of Florida from re-solicitation.

ARTICLE 34 – THIRD PARTY BENEFICIARY DISCLAIMER

It is not the intention of these documents to create third party beneficiary status in any person or entity that is not a direct party to this Agreement, and no language in this Agreement should be construed or interpreted as creating a third party beneficiary.

ARTICLE 35 – E-VERIFY – EMPLOYMENT ELIGIBILITY

- 35.1 The CONTRACTOR certifies, warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended and that CONTRACTOR shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the CONTRACTOR'S subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.
- 35.2 AUTHORITY shall terminate this Agreement if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If AUTHORITY has a good faith belief that one of CONTRACTOR'S subcontractor(s) has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, AUTHORITY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor. If AUTHORITY terminates this Agreement pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by AUTHORITY for a period of one (1) year from the date on which the

Agreement was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by AUTHORITY as a result of the termination.

ARTICLE 36 – CONFIDENTIALITY

No reports, information, computer programs, documentation, and/or data given to, or prepared or assembled by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the AUTHORITY.

ARTICLE 37 – PAYMENT ADJUSTMENT SCHEDULE

37.1 The AUTHORITY acknowledges the fluctuating nature of prices.

37.2 Annual Non-Fuel: The Non-Fuel Adjustment shall be applied to those rates subject to adjustment and as provided within this Agreement. For the purpose of this Agreement, the Non-Fuel component is assumed to represent 90% of the CONTRACTOR's costs. Therefore, 90% of the approved rates shall be so adjusted:

The rates shall be adjusted as follows:

The rates shall be adjusted annually, commencing on the first anniversary date, by the change in the Water and Sewer and Trash Collection Services Index, Series ID CUSR0000SEHG, as published by the United States Department of Labor, Bureau of Labor Statistics (www.bls.gov). The change in the index shall be calculated by dividing the average of the index over the twelve-month period ending the December preceding the effective date of the adjustment (January – December 2022) by the average of the index over the twelve-month period from January 2021 through December 2021. The first Annual Non-Fuel adjustment shall be effective May 7, 2023 to May 6, 2024.

For example:

For the Contract year beginning May 7, 2023, the average of the index over the twelve-month period from January 2022 through December 2022 shall be divided by the average of the index over the twelve-month period from January 2021 through December 2021, multiplying the result by ninety (90) percent of the contract or AUTHORITY established price, and subtracting ninety (90) percent of the contract or AUTHORITY established price.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most Recent Year Average / Prior Year Average x .90 x Rate – (.90 x Rate) = Annual Adjustment

Calendar:

Annual Payment Adjustment Calendar

April 2023	April 2024
---------------	---------------

Extension Clause Annual Payment Adjustment Schedule

April 2025	April 2026	April 2027
---------------	---------------	---------------

37.3 Activation Fuel Adjustment (Fuel Surcharge/Credit)

The rates subject to adjustment shall be subject to a fuel price surcharge/credit for fluctuations in the price of fuel. For the purpose of this Agreement, fuel is assumed to represent 10% of the Contractor's costs therefore 10% of the approved rates shall be so adjusted. Fuel adjustment shall be calculated and effective upon activation.

The rates shall be adjusted as follows:

For the rates subject to adjustment, a fuel surcharge/credit shall be charged/credited basis based on the percentage change in the average price of fuel as published by the Oil Price Information Service (OPIS) and measured by the OPIS Standard Rack, OPIS No. 2 Distillate Gross Prices, Unbranded Average for Miami, Florida between the month of **January 2022 (Base)** and the most recent month available upon activation.

Fuel Adjustment does not use a floor or ceiling and provides adjustments in either direction without limit.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most recent OPIS (at activation) / Base x .10 x Rate – (.10 x Rate) = Fuel Adjustment (for duration of activation)

For example:

Should activation occur October 2023, the fuel surcharge/credit shall be calculated by dividing the reported unbranded average price for September 2023 by the Base (unbranded average price for January 2022), multiplying the result by ten (10) percent of the contract or Authority established price, and subtracting ten (10) percent of the contract or Authority established price.

- 37.4 In the event that either of these indices is no longer available, the parties shall mutually agree to a replacement index. The value of the adjustment will be determined by the AUTHORITY.

ARTICLE 38 – ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

The CONTRACTOR has entered into a contingent Agreement with the AUTHORITY for Hurricane/Disaster Debris Removal, Reduction, and Disposal. The Agreement awarded will be activated on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY may activate, assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action as it determines in its sole and unfettered discretion.

ARTICLE 39 – TASK ORDER/PERFORMANCE

Task Orders shall be executed bilaterally, and the scope of services and format of Task Orders shall be mutually agreed to by the CONTRACTOR and AUTHORITY. Performance will be measured by the metrics established in each Task Order. After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide a written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR default or underperformance by any means it deems in its best interest. CONTRACTOR will be required to provide a daily report of quantity of work performed under each Task Order. The daily report shall be submitted by 11:00 a.m. or earlier the following morning.

ARTICLE 40 – BONDS

CONTRACTOR shall maintain a Proposal Bond in the sum of \$500,000. The CONTRACTOR's Proposal Bond will be returned to the CONTRACTOR in exchange for and acceptance of an appropriate size bond as determined by the

AUTHORITY after assessment of damage and definition of the CONTRACTOR's scope of service. In case of hurricane caused damage, a Category 1 storm would require a \$2,000,000 Bond, a Category II would require a \$4,000,000 Bond, a Category III would require a \$6,000,000 Bond, a Category IV would require an \$8,000,000 Bond, and a Category V would require a \$10,000,000 Bond. The Bond required would be a Performance and Payment Bond, Attachment H. The cost of the Bond is included in the unit rates in the Fee Schedule, Exhibit B. The CONTRACTOR shall maintain the Proposal Bond in effect until the Performance and Payment Bond is submitted to and accepted by the AUTHORITY. If the CONTRACTOR fails to supply a Performance and Payment Bond, the AUTHORITY shall be entitled to retain the Proposal Bond to rectify the CONTRACTOR's unacceptable performance. Pending successful annual CONTRACTOR recertification, the Proposal Bond shall be in effect for the entire term of the Agreement, except for period(s) of time when a Performance and Payment Bond is in effect.

ARTICLE 41 – FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273

- 41.1 This Agreement incorporates all of the provisions set forth in the document commonly known as FHWA Form 1273, Attachment F, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor" as used in Attachment F shall apply to and mean the CONTRACTOR who may be referred to in Attachment F as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONTRACTOR will perform the duties and obligations of the other contracting party regardless of the description or label used in Form 1273, Attachment F.
- 41.2 The CONTRACTOR shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or "linked" to a particular Federal Highway. Wage rate tables may be found at <http://www.dot.state.fl.us/construction/wage.shtml>. Said wage rate tables are incorporated into and made part of this Agreement by reference.

ARTICLE 42 – BUY AMERICA REQUIREMENTS

The CONTRACTOR agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), as they may be amended from time to time) as they relate to Federal-aid contracts and the use of steel and iron produced in the United States. A description of the requirements of Buy America is set forth in Attachment G, which is attached hereto and incorporated by reference as part of this Agreement. CONTRACTOR shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, and FEMA, to the extent applicable.

ARTICLE 43 – DISADVANTAGED BUSINESS ENTERPRISES

- 43.1 This provision shall supplement Article 31 "Equal Business Opportunity Program" of the Agreement. The Agreement is subject to the requirements of 49 CFR Part 26. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13). Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.
- 43.2 The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its

subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.

- 43.3 The CONTRACTOR shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONTRACTOR shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation's (FDOT) website found at www.bipincwebapps.com/bizwebflorida/. Audits may be conducted to review payments to DBE subcontractors. The CONTRACTOR will fully cooperate with the AUTHORITY, FDOT, or FEMA regarding the monitoring of subcontractors and payments made thereto.

ARTICLE 44 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

- 44.1 This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONTRACTOR shall verify that neither the CONTRACTOR, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.
- 44.2 The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONTRACTOR must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. CONTRACTOR's certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 45 – ACCESS TO RECORDS AND THEIR RETENTION

- 45.1 This provision shall supplement Article 26 of this Agreement. The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONTRACTOR agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.
- 45.2 The CONTRACTOR shall make all of its books, records, and other documents related, in any manner to its or its subcontractors' performance of the Agreement, available to the AUTHORITY and any other funding entity (e.g. FDOT, FEMA, the Comptroller General of the U.S. or any of their authorized representatives) for the purpose of examination, audit, reproduction, excerpts and transcripts, during normal business hours, at the CONTRACTOR's place of business or if CONTRACTOR's place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONTRACTOR shall also require its subcontractors to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONTRACTOR.

ARTICLE 46 – AUDIT REQUIREMENTS

This provision shall supplement Article 26 of this Agreement. The CONTRACTOR agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONTRACTOR agrees that it will comply, execute any necessary documents and fully cooperate with the AUTHORITY and any State and/or Federal funding agency(ies), including but not limited to FDOT, Florida's Auditor General, FEMA, or any of their authorized representatives, in any audit or monitoring procedures or processes any such entity(ies) may undertake related to CONTRACTOR's performance of the Agreement in order to properly and satisfactorily complete the audit, if any.

ARTICLE 47 – NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONTRACTOR shall cooperate with the AUTHORITY, FDOT, and FEMA so as to assure that all activities related to the performance of this Agreement comply with the requirements of the National NEPA of 1969, as amended, and the regulations and guidance related thereto.

ARTICLE 48 – AMERICANS WITH DISABILITIES ACT

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act of 1990 (42 USC 12102, et seq.), as it may be amended, and all applicable impending regulations of the U.S. DOT, FEMA, and other Federal-aid agencies.

ARTICLE 49 – COMPLIANCE WITH TITLE VI, TITLE VII, AND OTHER FEDERAL LAWS AND REGULATIONS

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 USC 2000d et. Seq. and 3601 et seq.) and the Age Discrimination and Employment Act of 1967 and Section 303 of the Age Discrimination Act of 1975, as amended (42 USC 6102), and all applicable Federal laws and regulations, policies, procedures, and directives of the U.S.DOT, FEMA and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

ARTICLE 50 – CONVICT LABOR PROHIBITION

The CONTRACTOR does hereby represent and certify that it will comply with the convict labor prohibition in 23 U.S.C. 114, and all implementing regulations thereto.

ARTICLE 51 – CERTIFICATION REGARDING LOBBYING ACTIVITIES

A Bidder or Proposer for an award of certain Federal-Aid contracts in the amount of \$100,000 or more, must file the certification required by 49 CFR Part 2. The CONTRACTOR confirms that by signing and submitting a Bid or Proposal for the work covered by this Agreement, it made the certification described in Section X1 of the Attachment F herein.

ARTICLE 52 – DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

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

ARTICLE 53 – NO OBLIGATION BY FEDERAL GOVERNMENT

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

ARTICLE 54 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

EXHIBIT "A"

In Witness Whereof, AUTHORITY, and CONTRACTOR have made and executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

WITNESS:

1.


2.

By:


Daniel Pellowitz
Executive Director

(SEAL)

APPROVED AS TO LEGAL SUFFICIENCY:

Howard J. Falcon III
By: 
Howard J. Falcon, III
General Counsel


APPROVED AS TO TERMS AND CONDITIONS:


Signature
Patrick D. Carroll
Print Name
COO
Title

ATTEST:


Corporate Secretary

DRC EMERGENCY SERVICES, LLC:


Authorized Signature
Kristy Puentes
Print Name
Vice President, Secretary, Treasurer
Title
Date

WITNESS:

1.

2.

(Affix Corporate Seal)

Approved by Authority Board on April 13, 2022, Item No.: 9. C.1

SCOPE OF WORK

1. PROJECT DESCRIPTION AND REQUIREMENTS:

- A. The AUTHORITY seeks COINTRACTOR to remove and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible garbage) from public property and public rights-of-way, and to setup and operate Temporary Debris Management Site(s) (TDMS) in Palm Beach County, Florida, immediately after a hurricane or other disaster.
- B. The objective of this RFP and subsequent contracting activity is to secure the services of an experienced CONTRACTOR who is capable of efficiently removing large volumes of disaster-generated debris from a large area in a safe, timely and cost-effective manner and lawfully disposing of all debris. CONTRACTOR must be capable of assembling, directing, and managing a work force that can complete the debris management operations in 120 days or less. The duration of effort/completion dates of all tasks will be determined jointly by the AUTHORITY and CONTRACTOR. This determination will be set in writing in appropriate Task Order(s).
- C. The CONTRACTOR shall perform all work in strict accordance with Federal Emergency Management Agency (FEMA) guidelines in order to maximize recovery of reimbursable expenses. This task shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished.
- D. The CONTRACTOR may be required, at the AUTHORITY'S discretion, to be under the direction of an agent of the AUTHORITY.
- E. While intended to cover debris management needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to Palm Beach County, Florida. The planning standards used for this project are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida. The AUTHORITY intends to enter into contingency Agreement(s) as further defined herein, to provide emergency debris removal and disposal services as required by the AUTHORITY.

2. INTRODUCTION:

- A. The AUTHORITY'S disaster recovery planning includes considerations for removing and processing the volumes and types of debris expected to be generated by a major disaster such as a hurricane or major flood and includes procedures for disposing of that debris. The planning approach is formulated in part on the concept of strategic pre-positioning of plans and resources necessary for timely, safe, coordinated recovery operations, including removal of debris from public property and rights-of-way throughout Palm Beach County using a combination of county, municipal, and CONTRACTOR forces.
- B. If activation is required, the AUTHORITY intends to activate contracts on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY intends to activate the CONTRACTORS in the order of final ranking as best meets the needs of the AUTHORITY. The AUTHORITY reserves the right in its sole and unfettered discretion, to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the

circumstance(s), the event, or any other condition which may warrant such action.

- C. The AUTHORITY envisions the need for four (4) CONTRACTORS to carry out the debris removal and disposal work throughout Palm Beach County. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and to cover the expenses associated with a major recovery operation prior to the initial AUTHORITY payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel, comprehensive debris removal, volume reduction operations plan, and demonstrable experience in major disaster recovery projects.
- D. The Agreement(s) to be awarded under this RFP will be contingency Agreement(s) that will be activated only in the face of an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until the Agreement is activated either in anticipation of a natural disaster or immediately after such disaster.
- E. The CONTRACTOR who receives an Agreement for the work, will be required to participate in certain AUTHORITY directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the AUTHORITY.
- F. The AUTHORITY does not guarantee a CONTRACTOR will be activated if awarded an Agreement.

3. PLANNING STANDARD FOR DEBRIS REMOVAL AND DISPOSAL:

The AUTHORITY'S goal is to complete the debris removal and disposal process in 120 days following the storm event. This assumes that the entire area of the county will be accessible within that period. Due to the low elevation and potential for flooding, some areas might not be accessible for several weeks after a major natural disaster. The CONTRACTOR must be aware that it might not be possible to initiate operations in all parts of the county simultaneously immediately after a storm.

4. DEBRIS MANAGEMENT:

- A. Planning for debris management operations is a function of the AUTHORITY as a supporting agency to the Palm Beach County Department of Engineering and Public Works. The AUTHORITY'S Emergency Management Coordinator will direct the debris removal and disposal operations.
- B. In addition to using AUTHORITY forces and equipment, the AUTHORITY intends to execute four (4) debris removal and disposal Agreements on a contingency basis for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the AUTHORITY in the aftermath of a major disaster. Each CONTRACTOR holding a debris removal and disposal Agreement will serve as a General CONTRACTOR for the purpose of debris removal and disposal operations and will be able to use his/her own and subcontractor resources to meet the obligations of the Agreement. It is anticipated, but not required, that the CONTRACTOR will use both local and non-local subcontractors.

EXHIBIT "A"

- C. When a major disaster occurs or is imminent, the AUTHORITY intends to contact the highest two (2) or three (3) ranked CONTRACTORS holding debris removal and disposal Agreements to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will generally be limited to debris in, upon, or brought to county residential private and public streets and roads, rights-of-way, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations. Disposal of debris will be at AUTHORITY approved TDMS or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all TDMS.
- D. When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order, to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane or major flood. Depending on the nature of the storm and circumstances, the AUTHORITY may activate more than one (1) CONTRACTOR. CONTRACTOR(S) will generally be activated in order of final ranking.
- E. Specific task orders will be issued to select CONTRACTORS based on the best interest of Palm Beach County. The AUTHORITY reserves the right to assign work or task orders to various CONTRACTORS based on capability. The AUTHORITY does not guarantee a cradle to grave pricing arrangement but reserves the right to pick and choose CONTRACTORS based on ranking.
- F. The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.
- G. The AUTHORITY will make every effort to identify strategically located public and private TDMS throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional public and private TDMS will be identified as needed.
- H. The CONTRACTOR will operate the public and private TDMS and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate TDMS. The CONTRACTOR is responsible for all activity at TDMS operated by their subcontractor and must have an employee on site at all times to oversee daily operations. **The locations of both publicly and privately owned sites currently under consideration are shown on Attachment C.** Additional public and privately owned TDMS may become available as plans develop. The

EXHIBIT "A"

availability of both private and public TDMS may change during the term of the Agreement.

- I. The AUTHORITY may also establish designated homeowner drop-off sites on a public right-of-way (PROW) for communities. The CONTRACTOR will be responsible for removing all eligible debris from those approved designated locations at the direction of the Emergency Management Coordinator or designee.
- J. Curbside segregation of debris and disaster-generated or related wastes will be an element of the AUTHORITY'S disaster recovery program. The debris removal and disposal CONTRACTOR will be required to aid in the segregation and waste stream management processes. Any Household Hazardous Waste (HHW) encountered by the debris removal CONTRACTOR is to be set aside. HHW disposal will be the responsibility of the resident. The AUTHORITY will designate HHW drop-off locations.
- K. The following items are considered HHW for the purpose of this Agreement:
 - 1. Used Oil
 - 2. Batteries
 - 3. Paint
 - 4. Aerosol spray cans
 - 5. Pesticides
 - 6. Antifreeze
 - 7. Fluorescent light bulbs
 - 8. Propane tanks (household size)
- L. The CONTRACTOR will setup a lined containment area and separate any HHW inadvertently delivered to a TDMS.
- M. Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will be set aside for collection and disposal by a Hazardous Materials Removal and Disposal Contractor who will be selected by the AUTHORITY.
- N. Putrescible residential garbage will be collected by AUTHORITY franchise waste haulers and is not to be collected or transported by CONTRACTOR forces. The AUTHORITY may enter into a separate emergency debris removal agreements with each franchise hauler to operate their dedicated self-loading collection equipment within their Service Area for FEMA eligible storm debris removal.

5. SCOPE OF WORK/OVERVIEW:

This section is divided into three (3) subsections:

- 5.1 **Debris Removal and Disposal Operations** from residential public and private streets, roads and rights-of-way and delivered to a TDMS designated by the Authority.
- 5.2 **TDMS Operations** which includes daily operations as well as reclamation of the site to its pre-storm condition or as directed by the AUTHORITY Emergency Management Coordinator

5.3 Processing, Loading and Hauling Material from TDMS to final destination.

- A. Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, timeframe for completion, rates to be used, etc. Any job with requirements or rates not covered by this Proposal will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest at the CONTRACTOR'S expense.
- B. The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.
- C. The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.
- D. The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY's Director, Customer Information Services prior to issuance of the first Task Order.
- E. The quantity of work required to complete the Agreement resulted from this RFP is estimated. The actual effort required may be more or less than the estimated amount shown in the Proposal Form 3 – Price Proposal. Payment will be made at the unit rates proposed. The output will be verified by the AUTHORITY's Director, Customer Services in the daily operational report. Should hourly rates be used to pay for certain equipment other than preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.

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- F. The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no additional cost to the AUTHORITY.
- G. The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- H. The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

6. DEBRIS REMOVAL AND DISPOSAL OPERATIONS

6.1 General:

- A. The purpose of this section is to define the requirements for debris removal and disposal operations after any catastrophic disaster within Palm Beach County. The AUTHORITY may designate zones for collection and disposal locations for debris collected. CONTRACTORS will be tasked with a service area(s) for this specific work immediately after the activation of the Agreement.
- B. For work performed on a Time and Materials basis, all hourly equipment rates shall include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, and all other costs associated with the equipment including labor and operator.

6.2 Services:

- A. The CONTRACTOR shall provide equipment, operators, and laborers for debris removal operations. The CONTRACTOR shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, and repairs) all equipment under this Agreement.
- B. All rates are to include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and all other costs.
- C. The work shall consist of clearing and removing disaster generated debris as directed by the AUTHORITY Emergency Management Coordinator. CONTRACTOR shall provide collection equipment the day following a natural disaster or as directed by the AUTHORITY and shall provide equipment sufficient to collect a minimum of 50,000 cubic yards of debris per day within ten (10) calendar days of collection commencement (Past AUTHORITY natural disaster cleanup records show that ten (10) days' following disaster, 95,000-126,000 cubic yards of debris collected per day). Failure to provide sufficient equipment necessary to collect required amount may result in the AUTHORITY entering into a separate agreement with another contractor for collection services.

6.2.1 Removal of Hazardous Leaning Trees and Hanging Limbs

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous trees twelve inches (12") or greater in diameter, measured three feet (3') from the base of the tree or chest height and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way. Further, debris generated from the removal of hazardous trees and hanging limbs two inches (2") or greater existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Hazardous leaning trees less than twelve inches (12") in diameter, measured three feet (3') from the base of the tree or at chest height, will be flush cut, and placed on the public right-of-way to be removed as vegetative debris. The AUTHORITY will not compensate the CONTRACTOR for leaning trees less than twelve inches (12") in diameter on a unit rate basis.
- b) Removal and transportation of hazardous trees twelve inches (12") or greater in diameter and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of leaning trees will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for leaning or hazardous trees to be removed and eligible for reimbursement, the tree must satisfy a minimum of one (1) of the following requirements:
 - i) The tree is leaning in excess of 30° degrees in a direction that poses an immediate threat to public health, welfare, and safety.
 - ii) The tree is dead, twisted, or mangled as a direct result of the storm and a certified arborist can attest to the fact that the tree will die and potentially create a falling hazard to the public.

6.2.2 Removal of Hazardous Stumps

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous uprooted stumps 24 inches or greater in diameter, measured 24 inches from the base of the tree existing in private and public right-of-way. Further, debris generated from the removal of uprooted stumps existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Stumps measured 24 inches from the base of the tree and less than 24 inches in diameter will be considered normal vegetative debris and removed in accordance with 3.1.2. The AUTHORITY will not compensate hazardous stumps less than 24 inches in diameter on a unit rate basis and instead will be considered normal vegetative debris. The diameter of stumps less than 24 inches will be converted into a cubic yardage volume based on the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines) and removed under the terms and conditions of 2.6.2.
- b) Removal and transportation of hazardous uprooted stumps existing in the

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private and public right-of-way and private property will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of hazardous stumps will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for hazardous stumps to be removed and eligible for reimbursement, the stump must satisfy the following requirement:

- (i) Over 50% of the tree crown is damaged or broken and heartwood is exposed.
- (ii) Tree stumps that are not attached to the ground will be considered normal vegetative debris and subject to removal under the terms and conditions of 2.1. The cubic yard volume of the unattached stump will be based off of the diameter conversion using the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines).

The AUTHORITY or its representative will measure and certify all stumps before removal.

6.2.3 Collection of Storm Generated Residential Vegetation and Construction and Demolition Debris:

- a) It is the AUTHORITY'S goal to ensure that Vegetation and Construction/Demolition debris remain separate task orders for the collection of Vegetation and Construction loads. Mixing of loads by the CONTRACTOR at the road right of way will not be tolerated.

Work may include:

- (i) First pass to clear debris from emergency evacuation routes, access roads to critical facilities and all primary roadways.
 - (ii) Clearing debris from residential private and public road right of ways.
 - (iii) Loading the debris.
 - (iv) Hauling the debris to an approved AUTHORITY TDMS or an authorized private construction demolition debris recycling facility or landfill.
 - (v) Dumping the debris at the TDMS or direct haul to an Authority permitted approved private Construction and Demolition Debris (C&D) recycling facility or Authority authorized landfill.
- b) Debris delivered to a TDMS, private C&D recycling facility or authorized landfill will be paid based on the per cubic yard price according to the Proposal Form 3 – Price Proposal.

6.2.4 Hourly Rate Clearing:

- a) From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:
 - (i) Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.

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- (ii) Perform emergency removal of debris if needed for life-saving measures.
 - (iii) Conduct daily briefings with debris managers and other officials to update progress and discuss issues.
 - (iv) Develop a traffic control plan along potential haul routes and at debris management and disposal sites.
- b) The CONTRACTOR shall not move from one designated Collection Zone to another area without prior approval from the AUTHORITY's Director, Customer Information Services or designee. CONTRACTORS and/or subcontractors that move to a designated Collection Service Area without prior AUTHORITY approval may be terminated immediately. The AUTHORITY reserves the right to relocate CONTRACTOR to other Collection Service Areas based on need and ability to perform required work at an acceptable level. The AUTHORITY reserves the right to immediately terminate CONTRACTOR and any subcontractor who fails to provide service in strict accordance with guidelines set forth by FEMA and the AUTHORITY.
- c) The AUTHORITY or designee shall forward all claims of damage to the CONTRACTOR daily. CONTRACTOR shall provide all contact information, including name, phone number, cellular phone number, fax number and email address, for personnel responsible for resolving all claims of damage. CONTRACTOR must respond to all claims of damage within 24 hours and resolve within ten (10) calendar days. Mailboxes must be repaired or replaced within two (2) calendar days. CONTRACTOR is responsible for all damage caused by his crew and/or subcontractors in the performance of debris removal.
- d) In the event the CONTRACTOR fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided in this Agreement, the AUTHORITY or designee may arrange for the repairs and assess the CONTRACTOR for the cost of the repairs and any applicable administrative charges. Any disputes as to damage responsibility will be presented to the Director, Customer Information Services or designee for review. The decision of the Director, Customer Information Services or designee will be final.

6.3 Equipment:

- A. All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:
- 1. Fencing must be permanently attached to one side of the truck bed.
 - 2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
 - 3. Fencing must extend to the bottom of the bed.

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4. After loading, bottom of fencing shall be tight against the bed of the truck and secured at a minimum of two locations.
 5. Solid iron metal bars must be secured to both sides of the fencing.
 6. There shall be no hand loaded equipment allowed.
- B. The AUTHORITY or designee shall complete certifications indicating the type of vehicle, make and model, license plate number, equipment number, and measured maximum volume, in cubic yards, of the load bed of each piece of equipment utilized to haul debris. The measured volume of each piece of equipment shall be calculated from actual internal physical measurement performed and certified by the CONTRACTOR. Maximum volumes may be rounded up to the nearest cubic yard. The reported measured maximum volume of any load bed shall be the same as shown on the placards affixed to each piece of equipment. The AUTHORITY reserves the right to re-measure trucks and trailers at any time to verify reported capacity. If a truck and/or trailer are re-measured and the yardage capacity is determined to be lower, the lower yardage volume will be retroactive to the initial load and total volume adjusted accordingly.
- C. All trucks and trailers utilized in hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. If installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and remarked. All extensions to the bed are subject to acceptance or rejection at the sole discretion of the AUTHORITY or designee.
- D. Trucks or equipment designated for use under this Agreement shall not be used for any other work during working hours. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement. Under no circumstance will the CONTRACTOR mix debris hauled for others with debris hauled under this Agreement. Failure to comply will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to provide any additional emergency debris collection services. Any and all unapproved changes to placard will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to perform any additional emergency debris collection services.

6.4 Securing Debris

The CONTRACTOR shall be responsible for properly and adequately securing debris on each piece of equipment utilized to haul debris. Prior to leaving the loading site, the CONTRACTOR shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted during loading and secured during transport. Tarps or other coverings shall be provided by the CONTRACTOR to prevent materials from falling or being blown from the bed. Loads not properly tarped or otherwise covered will not be allowed to dispose at any AUTHORITY approved TDMS which may result in non-payment to CONTRACTOR.

6.5 Equipment Signage

Prior to commencing operations, the AUTHORITY or designee shall affix to each piece of equipment, signs or markings indicating the Owner Operator's name and a unique equipment identification number. One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Each operator shall keep AUTHORITY certification with them at all times. Placards must remain on both sides of equipment.

6.6 Other Considerations

- A. The CONTRACTOR shall assign and provide an Operations Manager (OM) to the AUTHORITY TDMS to serve as the principal liaison between the AUTHORITY Director, Customer Services or designee and the CONTRACTOR'S forces. The assigned OM must be knowledgeable of all facets of the CONTRACTOR'S operations and have authority in writing to commit the CONTRACTOR. The OM shall be on call 24 hours per day, seven (7) days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for onsite accommodations. This linkage shall provide immediate contact via cell phone, Fax machine, and have Internet capabilities. The OM will participate in daily meetings and disaster exercises, functioning as a source to provide essential element information. The OM will report to the AUTHORITY Director, Customer Services or designee. This position will not require constant presence; rather the OM will be required to be physically capable of responding to the AUTHORITY Emergency Management Coordinator within 30 minutes of notification.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.
- C. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- D. Payment for debris hauled will be based on the quantity of debris hauled in cubic yards. Debris hauled to a TDMS will require a validated load ticket. Drivers will be given an electronic load tickets at the loading site by an AUTHORITY loading site monitor. The quantity of debris hauled will be estimated in cubic yards at the TDMS by an AUTHORITY TDMS monitor. The estimated quantity will be recorded on the electronic load ticket. The AUTHORITY TDMS monitor will retain one copy of the paper load ticket and the driver will retain the remaining copies of the load ticket. Debris being hauled to a permanent landfill will be paid based on cubic yards recorded on an approved electronic or paper load ticket. Payment will be made against the CONTRACTOR'S invoice once site monitor and CONTRACTOR load tickets and/or scale tickets match. Load tickets not properly completed and signed will not be paid.

7. TEMPORARY DEBRIS MANAGEMENT SITES (TDMS) OPERATIONS

7.1 General

- A. The purpose of this section is to define the requirements for TDMS Operations after any catastrophic disaster within Palm Beach County.
- B. The CONTRACTOR shall use only TDMS designated by the AUTHORITY Emergency Management Coordinator.
- C. The TDMS foreman shall direct all vehicular traffic and load drop-off operations. Different types of debris shall be kept in separate piles at the TDMS. At a minimum, one flag person shall be posted at each TDMS for traffic control and to direct unmixed loads to proper location (by debris type) to be offloaded. CONTRACTOR shall be responsible for sorting and proper placement of all loads not dumped in appropriate location which results in mixing the once separated debris at no charge to the AUTHORITY.
- D. The CONTRACTOR shall begin grinding vegetative debris within five (5) calendar days of TDMS opening date and removing mulch/wood chips within ten (10) calendar days of site opening date. It is very important your plan provides specific information for the final disposal destination location of the mulch / wood chips removed from the public or private TDMS. The CONTRACTOR shall begin removal of Construction and Demolition/mixed debris from TDMS to an approved final destination within five (5) days of site opening date.

7.2 TDMS Services

7.2.1 Site Setup/Preparation and Site Closeout/Restoration Site setup/preparation and site closeout/restoration shall be compensated on a time and materials basis in accordance with the hourly rates provided in the Proposal Form 3 – Price Proposal. Site set-up/preparation/closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, limerock or crushed concrete access roads, seeding, and any other similar activity necessary to make the site usable for its intended purposes and to return the site to its original condition. Do not include any materials in calculating the hourly rates in the Proposal Form 3 - Price Proposal. Important- Phase I TDMS Reclamation is included in the 2.0 cubic yard price. Phase I Reclamation requires the contractor to remove all debris from the TDMS including small particles mixed with soil and grading the entire area. The only site closeout cost will be removal of road base material and seeding as approved by the Authority.

7.2.2 TDMS Operations and Material Processing

- a. TDMS operations and material processing shall be compensated in accordance with the unit prices provided in the Proposal Form 3 - Price Proposal. The CONTRACTOR shall provide equipment, operators, and laborers for TDMS operations as specified by Task Order. Unit prices provided in the Proposal Form 3 - Price Proposal, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance)

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all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each TDMS. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the TDMS. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and any other costs. The work shall consist of managing the operations of a TDMS and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator

- b. The AUTHORITY plans to use two types of TDMS.
 - 1. Vegetative TDMS will be devoted to the reduction of clean woody debris by either burning or grinding. The AUTHORITY expects the material to be recycled and or beneficially re-used if processed by grinding. It is important to provide a detailed plan on how this material will be recycled or beneficially reused after grinding / reduction.
 - 2. Depending upon the size and type of devastation the AUTHORITY may require a separate Construction & Demolition (C&D) staging area, mixed debris staging area and a separate Household Hazardous Waste staging area. The AUTHORITY requests that PROPOSER implements recycling and or reduction programs to minimize the quantity of construction debris material to be land filled.
- c. Material coming into the Vegetative or C&D TDMS will be measured and paid for by the cubic yard according to the Proposal Form 3 – Price Proposal. Material removed and transported from a C&D TDMS will be measured and paid by the cubic yard according to the Proposal Form 3 – Price Proposal.
- d. Locations of all TDMS will be approved by the AUTHORITY. The AUTHORITY Emergency Management Coordinator must approve site improvements before work begins and any costs, other than those in the Proposal Form 3 – Price Proposal, that might have been negotiated under a Task Order shall be documented for payment.
- e. Material processed at a TDMS by either grinding or burning will be measured

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using cubic yards from incoming load tickets. Material entering a TDMS will be deposited in manageable piles.

7.3 Reporting

The CONTRACTOR shall submit a report to the AUTHORITY Emergency Management Coordinator or designee by close of business each day of the term of the Task Order. Each report shall contain, at a minimum, the following information:

1. Contractor's Name
2. Contract Number
3. Daily and cumulative hours for each piece of equipment, *if appropriate*
4. Daily and cumulative hours for personnel, by position, *if appropriate*
5. Volumes of debris handled

Failure to provide audit quality information by 5:00 p.m. of the following day of operation will subject CONTRACTOR to non-payment in each instance at the sole discretion of the AUTHORITY.

7.4 Other Considerations

- A. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. In the event a TDMS must be closed due to CONTRACTOR equipment or operational failures, CONTRACTOR shall be liable for liquidated damages in the amount of \$25,000.00 per day for every day the site has to remain closed.

7.5 Debris Clearance (for access) from Right-of-Ways and Public Property

- A. The AUTHORITY provides support to Palm Beach County Government for Debris Management, including the clearance (moving debris from the middle of the road, etc.) of debris from right-of- ways and public property. Palm Beach County intends to perform debris clearance for access with its own forces or under existing contractual Agreements between the County and local firms. However, in a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner.
- B. This debris clearance is to be considered supplemental and optional service. It is anticipated that debris clearance activities would be conducted, if needed, on a time and material basis using the rates in the Proposal Form 3 – Price Proposal.

8. PROCESSING, LOADING AND HAULING MATERIAL:

CONTRACTOR shall provide all necessary labor, material and equipment to process, load and haul wood chips from TDMS in Palm Beach County to final destination for disposal. CONTRACTOR shall provide all necessary labor, material and equipment to load and haul construction and demolition debris and/or mixed debris from TDMS as directed by the AUTHORITY. The AUTHORITY reserves the right to contract with other firms to process, load and haul wood chips and construction and/or mixed debris to a final destination as may best meet the needs of the AUTHORITY. All wood chips, construction and/or mixed debris shall be disposed of in accordance with all Local, State of Florida and Federal guidelines.

CONTRACTOR will provide detailed listing to the AUTHORITY of the following:

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch / reduced yard waste material generated at TDMS is disposed, to include address/GPS location.
4. AUTHORITY will determine final private or public Construction/Demolition debris disposal/recycling facility.

9. MISCELLANEOUS REQUIREMENTS**9.1 TDMS Foreman**

- A. The TDMS foreman must be an employee of the CONTRACTOR and is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety.
- B. The TDMS foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Services or designee.

9.2 TDMS Night Foreman

- A. The TDMS night foreman must be an employee of the CONTRACTOR and is responsible for managing all night operations approved by the AUTHORITY.
- B. The TDMS night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Information Services or designee.

9.3 TDMS Management Plan

- A. Once the TDMS is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.
- B. Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:
 1. Access to site
 2. Site preparation -clearing, erosion control, and grading
 3. Traffic control procedures

4. Safety
5. Segregation of debris
6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
8. Specific plan including and location for the final disposal destination of the mulch/wood chips generated at the public or private TDMS.

9.4 Inspection Tower

The CONTRACTOR shall construct an inspection tower at each TDMS within three (3) calendar days of natural disaster. The tower shall be constructed using pressure treated wood or steel scaffold. The floor elevation of the tower shall be 10-feet above the existing ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Inspection towers must provide a dry area for employees and meet all FEMA and OSHA requirements.

9.5 Grinding Operation

The CONTRACTOR shall have grinder(s) on site and in operation within five (5) calendar days following a natural disaster. Failure to provide sufficient grinding capacity to accommodate expected incoming volumes and allow site to operate in an efficient manner within five (5) calendar days shall result in liquidated damages of \$10,000 per day. There shall be no period longer than 24 hours in which grinding activity may stop due to equipment or operational failure. Failure to provide back-up equipment within 24 hours shall result in liquidated damages of \$2,000 per hour per approved hours of grinding operation per day until grinding activity resumes.

9.6 Household Hazardous Waste Containment Area

The CONTRACTOR shall construct a hazardous material containment area at each TDMS. The area shall be 30' x 30'. The perimeter shall be lined with hay bales and staked in place. The area shall be lined with a heavy gage plastic to provide a waterproof barrier. Additional plastic sufficient to cover the area is required to prevent rain from entering the containment area. Site run-off must be redirected from the containment area by site grading.

10. PERFORMANCE OF CONTRACTOR

- A. It is the intent of this Agreement to ensure that the CONTRACTOR provides a timely quality level of services. To this end, all complaints received by the Emergency Management Coordinator or designee and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.

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- B. The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:
 - 1. Failure to open pre-storm identified sites within three (3) calendar days of after being tasked by the AUTHORITY liquidated damages of \$10,000 per day for each day not opened.
 - 2. Closure of TDMS due to CONTRACTOR equipment or operational failures liquidated damages of \$25,000 per day, for each day site must remain closed.
- C. Failure to provide back-up grinder(s) within 24 hours of equipment breakdown liquidated damages of \$2,000 per hour per approved grinding hours of operation per day.
- D. CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each occurrence of the following infractions:
 - 1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.
 - 2. Loads not properly tarped or otherwise covered.
 - 3. Mixing debris hauled from other sources with debris hauled under this Agreement.
 - 4. Mixing vegetation debris with C & D material.
- E. CONTRACTOR may be immediately terminated and not paid for the following:
 - 1. Collection of any non-eligible, non-AUTHORITY approved stumps or debris.
 - 2. Moving to another designated Collection Service Area without prior AUTHORITY approval.
 - 3. Failure to provide service in accordance with guidelines set forth by FEMA and the AUTHORITY.
 - 4. Soliciting work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement.
 - 5. Alteration of placards placed on certified trucks and/or trailers.

Any disputes regarding Performance of Contractor will be presented to the Emergency Management Coordinator or designee for review. The Emergency Management Coordinator or designee shall complete review and make determination within three (3) calendar days. Decisions of the Emergency Management Coordinator or designee shall be final.

FEE SCHEDULE

PROPOSAL FORM 3 – PRICE PROPOSAL

PART A – VOLUME BASED PRICING FOR 3,000,000 CUBIC YARD (CY) DEBRIS DISASTER

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated TDMS.				
A. Vegetation	2,500,000	CY	\$8.32	\$20,800,000.00
B. Construction Debris / Mixed Debris	500,000	CY	\$8.84	\$4,420,000.00
2.0 TDMS operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and Phase I Reclamation.	3,000,000	CY	\$1.12	\$3,360,000.00
3.0 Processing of debris through grinding and/or chipping.	2,500,000	CY	\$2.88	\$7,200,000.00
4.0 Loading, hauling and disposing wood chips to final destination. <i>(This rate includes disposal cost)</i>	1,000,000	CY	\$4.88	\$4,880,000.00
5.0 Loading and hauling of construction debris and/or mixed debris from TDMS to a permitted C&D recycling facility or any other designated Disposal Facility. <i>(This rate shall not include disposal cost). Based on miles from TDMS to final destination– 1 way.</i>				
A. 0 ≤ 20 miles	500,000	CY	\$3.74	
B. > 20 ≤ 50 miles	500,000	CY	\$5.62	
C. > 50 ≤ 100 miles	500,000	CY	\$5.98	
AVERAGE: (Item 6.0 A-C)			\$5.11	
AVERAGE: (Item 5.0 A-C) X 500,000 CY =				\$ 2,555,000.00
TOTAL PROPOSAL PRICE: (Items 1.0 - 5.0)				\$ 43,215,000.00

PROPOSER MUST PROVIDE PRICE FOR ALL LINE ITEMS 1 THRU 6. FAILURE TO DO SO MAY RENDER YOUR PROPOSAL TO BE DEEMED NON-RESPONSIVE.

Unit Prices, unless otherwise indicated, shall include all labor (operators, laborers, supervisors) and materials including but not limited to: supplies, equipment maintenance, repairs, repair parts, fuels, lubricants, cellular phones, transportation, and housing, if required, necessary to accomplish the project. The quantities and distributions are estimated for the purpose of making an award. Locations of sites, debris quantities, destinations, material densities, etc. may differ substantially in an actual disaster.

Assumptions: 3,000,000 cubic yards of debris consisting of 2,500,000 cubic yards of vegetation debris and 500,000 cubic yards of mixed debris.

PROPOSAL FORM 3 – PRICE PROPOSAL

PART B – HOURLY RATES

TDMS SET-UP AND CLOSURE AND DEBRIS CLEARANCE FOR ACCESS - OPTIONAL USE BY COUNTY AND OTHER GOVERNMENTAL ENTITIES			
EQUIPMENT AND LABOR RATES			
EQUIPMENT TYPE	HOURLY EQUIPMENT RATE	HOURLY LABOR RATE	TOTAL HOURLY RATE
Bobcat Loader	\$60.00	\$50.00	\$110.00
Crew Foreman w/ Cell Phone and Pickup	\$10.00	\$90.00	\$100.00
Dozer, Tracked, D5 or similar	\$50.00	\$50.00	\$100.00
Dozer, Tracked, D6 or similar	\$70.00	\$50.00	\$120.00
Dozer, Tracked, D7 or similar	\$90.00	\$50.00	\$140.00
Dozer, Tracked, D8 or similar	\$110.00	\$50.00	\$160.00
Dump Truck, 18 CY-20 CY	\$50.00	\$50.00	\$100.00
Dump Truck, 21CY-30 CY	\$60.00	\$50.00	\$110.00
Generator and Lighting	\$25.00	\$15.00	\$40.00
Grader w/ 12' Blade	\$125.00	\$50.00	\$175.00
Hydraulic Excavator, 1.5 CY	\$85.00	\$50.00	\$135.00
Hydraulic Excavator, 2.5 CY	\$110.00	\$50.00	\$160.00
Knuckleboom Loader	\$125.00	\$50.00	\$175.00
Laborer w/ Chain Saw	\$15.00	\$55.00	\$70.00
Laborer w/ small tools, traffic control, flag person	\$8.00	\$45.00	\$53.00
Lowboy Trailer w/ Tractor	\$90.00	\$50.00	\$140.00
Operations Manager w/ Cell Phone and Pickup	\$10.00	\$120.00	\$130.00
Pickup Truck, .5 Ton	\$25.00	\$0.00	\$25.00
Soil Compactor 81 HP+	\$75.00	\$50.00	\$125.00
Soil Compactor to 80 HP	\$55.00	\$50.00	\$105.00
Soil Compactor, Towed Unit	\$35.00	\$50.00	\$85.00
Truck, Flatbed	\$30.00	\$50.00	\$80.00
Tub Grinder, 800 to 1,000 HP	\$495.00	\$50.00	\$545.00
Water Truck	\$95.00	\$50.00	\$145.00
Wheel Loader, 2.5 CY, 950 or similar	\$125.00	\$50.00	\$175.00
Wheel Loader, 3.5-4.0 CY, 966 or similar	\$135.00	\$50.00	\$185.00
Wheel Loader, 4.5 CY, 980 or similar	\$195.00	\$50.00	\$245.00
Wheel Loader-Backhoe, 1.0-1.5 CY	\$95.00	\$50.00	\$145.00
Other – Please List			

Attach additional sheet with equipment type and labor rates, if needed

PROPOSAL FORM 3 – PRICE PROPOSAL

PART C – UNIT COST SCHEDULE

ITEM	HAZARDOUS STUMP REMOVAL, HAULING, AND DISPOSAL	UNIT	UNIT COST
1.	24-inch diameter to 48.99-inch diameter	Stump	\$275.00
2.	49-inch diameter and greater	Stump	\$425.00
3.	Stump Fill Dirt – Fill dirt for stump holes after removal	CY	\$0.10
HAZARDOUS HANGING LIMBS (HANGERS) To include removal of all hanging limbs. Limbs to be cut and placed on the right of way for collection as vegetative debris.			
4.	2-inch diameter and greater	Tree	\$85.50
HAZARDOUS TREE REMOVAL Trees to be flush cut at ground level and placed on the right of way for removal as vegetative debris.			
5.	6-inch diameter to 11.99-inch diameter	Tree	\$45.00
6.	12-inch diameter to 23.99-inch diameter	Tree	\$125.00
7.	24-inch diameter to 35.99-inch diameter	Tree	\$225.00
8.	36-inch diameter to 47.99-inch diameter	Tree	\$275.00
8.	48-inch diameter and greater	Tree	\$395.00

NOTE:

The following is information only and will NOT be considered in the evaluation of this RFP

The AUTHORITY reserves the right to use this contract to handle small quantities of debris removal and as support for our Franchise Contracts as needed. Below is a daily rate to remove debris. The AUTHORITY will pay for the disposal cost. There is no requirement to provide a rate, however if you do, we expect your company to honor this special service and respond within 48 hours at the rate below.

COLLECTION SERVICE ONLY	
EQUIPMENT	DAILY RATE (10 HRS/DAY)
Knuckleboom Loader and Operator	\$ 2,250.00

RFP No. 22-201/DL

- Rev 41 -

January 2022

ATTACHMENT "A"

**SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY**

7501 North Jog Road
West Palm Beach, Florida 33412
Telephone: 561-640-4000 • Fax: 561-640-3400



**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No. _____

In accordance with _____ (Contractor) contract, with the Solid Waste Authority of PBC, Florida, (AUTHORITY) Agreement No. _____ for Hurricane/Disaster Debris Removal, Reduction, and Disposal dated _____ the AUTHORITY hereby requests and authorizes the services to be performed on the project as described below:

Project: _____

Specific Work to be performed: _____

Duration of Work (Include Start Date, End Date and Total Calendar Days): _____

Method of Payment: _____

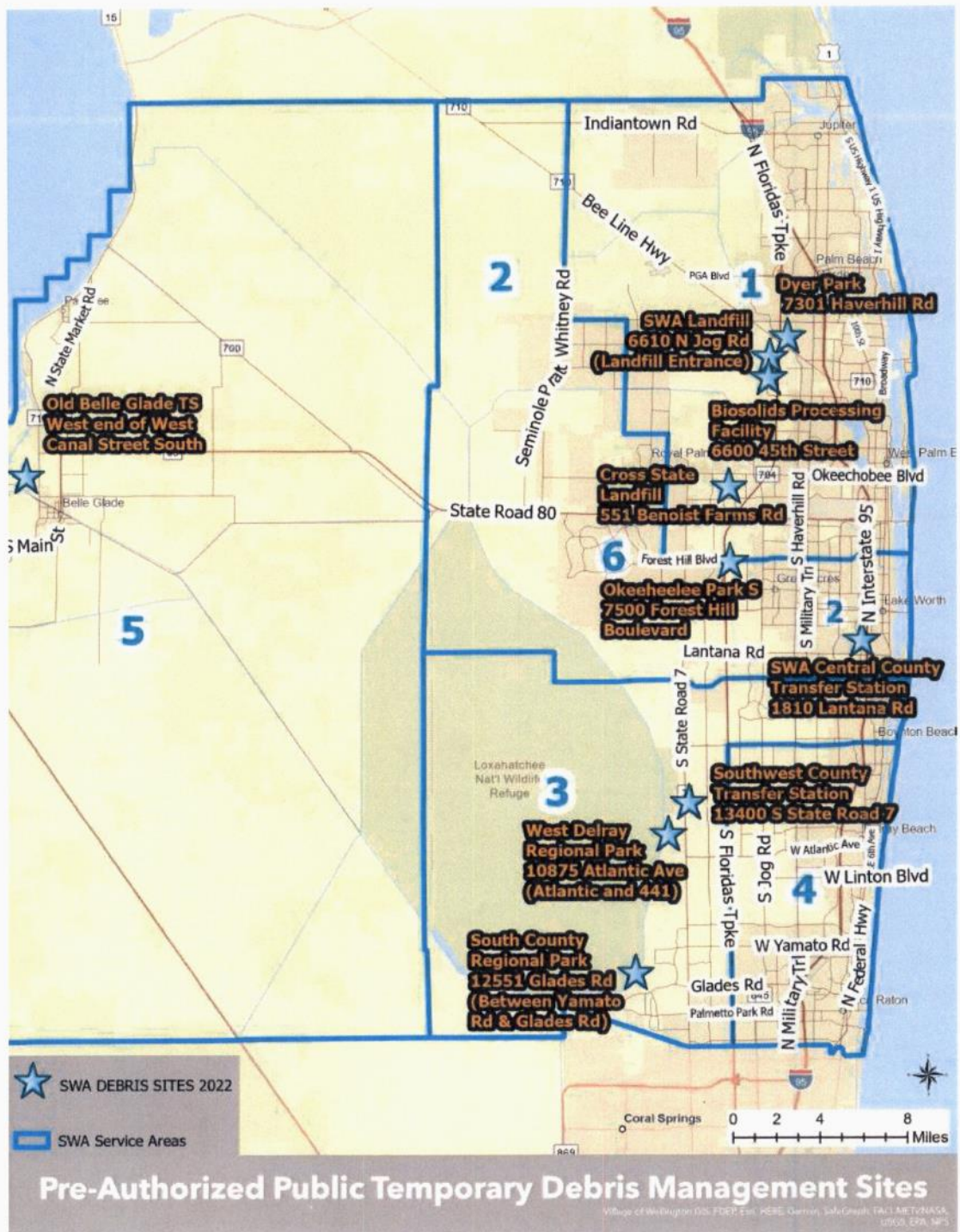
Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ Date: _____

AUTHORITY Signature: _____ Date: _____

SWA Use Only			
SWA Requestor/Monitor:	_____	Date:	_____
SWA Dept. Director:	_____	Date:	_____
Vendor No.:	_____	Account No.:	_____
Purchasing:	_____	Budget:	_____
		Project:	_____
		Accounting:	_____

ATTACHMENT "B"



ATTACHMENT "C"

PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE

The Public Assistance Program and Policy Guide, Version 4, Effective June 1, 2020 (see hyperlink below) is the most recent reference material that will provide additional information:

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf

PROJECT MANAGEMENT

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient close-outs of PA Program grants.

Record Keeping

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the "who, what, when, where, why, and how much" for each item of disaster recovery work. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;
- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

The Federal Office of Management and Budget requires grant recipients to maintain financial and program records on file for three years following final payment. Records of grant recipients may be subject to the provisions of the Single Audit Act, as described on page 117 of this guide. Applicants may refer to the Applicant Handbook, FEMA 323, for additional information regarding record-keeping.

ATTACHMENT "D"

MOBILIZATION SCHEDULE

CONTRACTOR shall commence mobilization of equipment, operators, and laborers immediately upon receipt of a Mobilization Task Order to meet the progress pattern set below.

	Category 1 & 2	Category 3	Category 4	Category 5
Within 24 hours	25%	25%	20%	15%
Within 48 hours	30%	30%	30%	25%
Within 72 hours	40%	40%	40%	40%
Within 96 hours	60%	60%	50%	50%
Within 5 days	100%	80%	60%	60%
Within 10 days		100%	80%	70%
Within 14 days			100%	80%
Within 20 days				100%

ATTACHMENT "E"

FHWA-1273

FHWA-1273 — Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (Included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting 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.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (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 (1.) of this section, in the sum of \$10 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 (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participant (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT "F"

BUY AMERICA REQUIREMENTS

Source of Supply – Steel and Iron (Federal Aid Contracts Only): For Federal-aid contracts, the Contractor will only use steel and iron produced in the United States, in accordance with the buy America provisions of 23 CFR 635.410. Contractor will ensure that all manufacturing processes for these materials occur in the United States. A manufacturing process is any process that modifies the chemical content, physical shape, size or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (*e.g.*, concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the compensation or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. The Contractor shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the finished product was manufactured in the United States in accordance with the requirements of this provision. Such certification shall also include: (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced with the United States except for minimal quantities of foreign steel and iron and specify the actual value of the product. Each such certification shall be furnished to the AUTHORITY prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, Contractor shall furnish invoices to document the costs of such material, and obtain the AUTHORITY'S written approval prior to incorporating the material into the project.

ATTACHMENT "G"

PERFORMANCE AND PAYMENT BOND

BY THIS BOND, WE, _____, Inc., as Principal and _____ a Corporation, as Surety, are bound to the Solid Waste Authority of Palm Beach County, hereinafter referred to as "Authority", in the sum of _____ Dollars (up to \$10,000,000), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Agreement dated _____, 20____ between Principal and Authority for Proposal of Hurricane/Disaster Debris Removal, Reduction and Disposal, **Agreement No. 22-201**, the Agreement being made a part of this bond by reference, in the time and in the manner prescribed in the Agreement, and;
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials and supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement, and;
3. Pays Authority all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Authority sustains because of a default by Principal under the Agreement, and;
4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement, and;
5. At completion of all work covered by Agreement and Final Payment by Authority to Principal then Principal will replace this Performance and Payment Bond with a Proposal Bond, in the amount of 5% of this Performance and Payment Bond, to be held by the Authority as a guarantee that Principal will provide to the Authority a Performance and Payment Bond in the amount of up to \$10,000,000 on the occasion of a subsequent Task Order in accordance with the above referenced Agreement;

then this bond is void; otherwise it remains in full force.

Surety shall be responsible for any and all liquidated damages imposed by the Authority for the referenced Agreement.

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or the changes does not affect Surety's obligation under this bond. Any increase in the total Agreement amount as authorized by the Authority shall accordingly increase the Surety's obligation by the same dollar amount of said increase. CONTRACTOR shall be responsible for notification to Surety of all such changes.

See subsection (2) of Section 255.05, Florida Statutes as amended for the notice and time limitations for claimants.

Signed and sealed this ____ day of _____, 20____.

PRINCIPAL: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

NOTE:

Date of Bond must not be prior to date of Agreement. If CONTRACTOR is a Partnership, all partners must execute bond.

IMPORTANT:

Surety companies executing bonds **must** appear and remain on the Treasury Department's most current list (Circular 570 as amended) during construction, guarantee and warranty periods, and be authorized to transact business in the State of Florida, and be pre-approved by the Authority.



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGREEMENT FOR

HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

PHILLIPS AND JORDAN, INC.

AGREEMENT NO. 22-201C

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33412
(561) 640-4000**

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of May 4th, 2022, (hereinafter referred to as the Agreement) by and between **Solid Waste Authority of Palm Beach County**, a dependent special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and **PHILLIPS AND JORDAN, INC.**, (hereinafter referred to as CONTRACTOR and when referred to collectively with AUTHORITY, the Parties), a Corporation, whose Federal Employer ID Number is **56-0694573**;

Whereas, in accordance with the AUTHORITY's Request for Proposals No. 22-201/DL, solicited to employ the services of the CONTRACTOR for the purpose of providing Hurricane/Disaster Debris Removal, Reduction and Disposal, and;

Whereas, CONTRACTOR represents it is qualified, capable and prepared to provide such services.

Now, therefore, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is acknowledged by the other, the parties hereto agree as follows:

ARTICLE 1 - EFFECTIVE DATE AND INCORPORATION OF RECITALS

The foregoing recitals are hereby incorporated herein by reference.

- 1.1 The Effective Date of this Agreement shall be **May 8, 2022** and the Initial Term of this Agreement is for three (3) years and shall expire on **May 7, 2025**, unless terminated earlier as provided for herein.
- 1.2 The AUTHORITY shall have the option of extending this Agreement for three (3) additional years, as approved by the AUTHORITY's Board or designee, in its sole and unfettered discretion, on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both Parties.
- 1.3 The continuance of this Agreement from year-to-year is contingent upon successful annual recertification of the CONTRACTOR's capabilities. The recertification process will be a review of the fiscal (bankruptcy, etc.), logistical (equipment availability, etc.), and moral (conviction for environmental crime, conviction for crime against a public entity, etc.) responsibility of the CONTRACTOR and a determination by the AUTHORITY, based on this review, of whether or not the CONTRACTOR continues to be a viable firm to provide the services described in this Agreement.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR shall perform the services as specifically stated in the Scope of Work, attached hereto and made a part hereof as Exhibit A, and/or as may be specifically designated and authorized by the AUTHORITY. Such authorizations will be referred to as Task Orders. Each Task Order shall set forth a specific scope of services, rate/amount of compensation, completion date, and other pertinent details of the task being authorized. The AUTHORITY, by virtue of this Agreement, gives the CONTRACTOR no guarantee of any work/services or any specific amount of work/services that may be accomplished during the period this Agreement is in full force and effect.

ARTICLE 3 - COMPENSATION

- 3.1 The AUTHORITY shall pay CONTRACTOR in accordance with the Fee Schedule, attached hereto and made a part hereof as Exhibit B. In addition, the Parties may negotiate a lump sum or not-to-exceed amount

on a per-project basis on an individual Task Order.

- 3.2 The CONTRACTOR shall submit semi-monthly invoices for services rendered. All invoices must reference the Task Order number. Invoices shall include a statement of progress and appropriate audit quality detail to satisfy the Federal Emergency Management Agency (FEMA) requirements.
- 3.3 Payment of CONTRACTOR by AUTHORITY is not contingent upon the AUTHORITY being reimbursed by the Federal Emergency Management Agency (FEMA). Payment to CONTRACTOR will be made for any work directed by the AUTHORITY which is determined by Federal and State agencies to be ineligible for reimbursement.
- 3.4 Payment of invoices shall be within thirty (30) days after receipt of a correct, fully documented invoice. All invoices shall be delivered to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attn: Accounts Payable

- 3.5 CONTRACTOR will clearly mark its final/last billing with the words "Final Invoice". This will certify that all services have been fully performed under this Agreement and that all charges and costs have been invoiced to the AUTHORITY. Thereupon, this account will be closed and any additional charges or costs, not included in the Final Invoice, shall be waived by CONTRACTOR. The AUTHORITY shall not be liable for the payment of any such additional charges or costs not included in the Final Invoice.
- 3.6 The AUTHORITY will retain 5% of the payment under each Task Order until such time as the entire project is completed to the AUTHORITY's satisfaction and all subcontractors and any material suppliers verify that they have been paid.

ARTICLE 4 - INSURANCE

- 4.1 During the performance of the Services under this Agreement, CONTRACTOR shall maintain the following insurance policies written by an insurance company authorized to do business in Florida and acceptable to the AUTHORITY.
 1. **General Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$1,000,000 for each occurrence.
 2. **Automobile Liability** Insurance with bodily injury limits of not less than \$5,000,000 for each person and not less than \$5,000,000 for each accident and with property damage limits of not less than \$5,000,000 for each accident.
 3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.
 4. **Excess Liability** Insurance with limits of not less than \$10,000,000 for each occurrence and annual aggregate.
- 4.2 Deductible amounts shall not exceed 5% of the total amount of required insurance in each category. Should any policy contain any unusual exclusions, said exclusions shall be so indicated on the certificate(s) of insurance.
- 4.3 CONTRACTOR shall furnish AUTHORITY **Certificates of Insurance**, which shall include a provision that

policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** after written notice has been given to the AUTHORITY. CONTRACTOR shall include AUTHORITY as an **Additional Insured** on the General Liability and Automobile Liability insurance policy required by this Agreement. All of CONTRACTOR'S subcontractors shall be required to include AUTHORITY and CONTRACTOR as **Additional Insureds** on all of their liability insurance policies.

- 4.4 CONTRACTOR shall ensure that CONTRACTOR's naming of the AUTHORITY as an additional insured on its General Liability and Automobile Liability insurance policies pursuant to this Agreement shall afford coverage for the negligent, reckless, intentionally wrongful or willful acts of CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement.
- 4.5 In the event that subcontractors used by the CONTRACTOR do not have insurance, or do not meet the required insurance limits herein, CONTRACTOR shall indemnify and hold harmless the AUTHORITY for any claim(s) in excess of the subcontractor's insurance coverage.
- 4.6 The CONTRACTOR shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

- 5.1 The CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the Services performed pursuant to this Agreement as is ordinarily provided by comparable, qualified professionals under similar circumstances. The CONTRACTOR shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.
- 5.2 The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONTRACTOR agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

The CONTRACTOR shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the Agreement.

6.3 SURVIVAL

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 - INDEPENDENT CONTRACTOR

- 7.1 The CONTRACTOR is, and shall be, in the performance of all work services and activities performed under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the

work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

- 7.2 The CONTRACTOR does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 8 - AUTHORITY TO CONDUCT BUSINESS

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all requirements in this Agreement.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the Services, the CONTRACTOR will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

ARTICLE 10 - SUB-CONTRACTING

- 10.1 The AUTHORITY reserves the right, in its sole and unfettered discretion, to accept the use of a subcontractor or to reject the selection of a particular subcontractor under this Agreement.
- 10.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

The AUTHORITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the AUTHORITY will provide an exemption certificate to CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the AUTHORITY, nor shall the CONTRACTOR be authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the AUTHORITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of the Solid Waste Authority of Palm Beach County.

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONTRACTOR, including existing reports, studies, financial information, and other required data that are available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

- 14.1 The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR: a) fails to satisfactorily perform any provisions of this Agreement; or b) fails to make progress so as to endanger performance under the terms and conditions of this Agreement; or c) repeatedly fails to perform; or d) does not remedy any such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONTRACTOR, the AUTHORITY may, in its sole

and unfettered discretion, procure goods and/or services similar to those required under this Agreement and the CONTRACTOR shall be liable for any excess costs incurred due to this action.

- 14.2 If it is determined that the CONTRACTOR was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of the CONTRACTOR), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

- 15.1 The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate this Agreement, in whole or in part, for the convenience of the AUTHORITY. The Director of Purchasing Services shall give five (5) business days prior written Notice of Termination to the CONTRACTOR, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONTRACTOR has the right to withdraw, without adverse action by the AUTHORITY, from the entire Agreement.
- 15.2 Unless directed differently in the Notice of Termination, the CONTRACTOR shall incur no further obligations in connection with the terminated work and shall stop work to the extent specified on the date given in the Notice of Termination. Additionally, unless directed differently, the CONTRACTOR shall terminate outstanding orders and/or subcontracts related to the terminated work.
- 15.3 Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination specified in the Notice of Termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

- 16.1 Neither the AUTHORITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 17 – JURISDICTION, VENUE, WAIVER OF JURY TRIAL AND REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located exclusively in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial failure by any party to exercise any right, power, or remedy hereunder, shall preclude that party from exercising that right, power or remedy in the future. **THE AUTHORITY AND CONSULTANT FREELY AND VOLUNTARILY AGREE TO WAIVE ITS RESPECTIVE RIGHT TO A JURY TRIAL ON ANY ISSUE(S) SO TRIABLE.**

ARTICLE 18 – COMMERCIAL NON-DISCRIMINATION POLICY

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it will comply with the AUTHORITY's Commercial Non-Discrimination Policy, as described in Section 6.3 of the AUTHORITY's Purchasing Manual, including subsequent amendments thereto, if any. As part of such compliance, the CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, gender, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONTRACTOR retaliate against any person for reporting instances of such discrimination. The CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the AUTHORITY's relevant marketplace in Palm Beach County. The CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the CONTRACTOR from participating in AUTHORITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The CONTRACTOR agrees and understands that the provisions of Section 6.3 of the AUTHORITY's Purchasing Manual are incorporated herein by reference and that the CONTRACTOR is familiar with the contents of same.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further or subsequent breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any further or subsequent default or breach.

ARTICLE 20 - SEVERABILITY

- 20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 20.2 The provisions of this section shall not prevent the entire Agreement from being void if a provision which is of the essence of the Agreement is determined to be void.

ARTICLE 21 - ENTIRETY OF AGREEMENT AND MODIFICATION

The AUTHORITY and the CONTRACTOR agree that this Agreement, including Exhibits and Attachments, and any matters incorporated by specific reference set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the AUTHORITY and CONTRACTOR pertaining to the services, whether written or oral. None of the provisions or terms and conditions contained in this Agreement may be added to, amended, modified, superseded or otherwise altered except by written instrument executed by the parties thereto.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONTRACTOR each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party and its partners, successors, executors, administrators, assigns and legal representative. CONTRACTOR shall not assign this Agreement without the prior express written approval of the AUTHORITY in its sole discretion via executed amendment.

ARTICLE 23 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - TRUTH-IN-NEGOTIATION CERTIFICATE

- 24.1 Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of the Agreement.
- 24.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this 'Certificate' within one (1) year following payment.

ARTICLE 25 - OWNERSHIP OF DOCUMENTS

CONTRACTOR shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the AUTHORITY for its use and/or distribution as may be deemed appropriate by the AUTHORITY in its sole and unfettered discretion.

ARTICLE 26 - PUBLIC RECORDS, ACCESS AND AUDITS

- 26.1 It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.

26.2 DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, THE CONTRACTOR'S DUTY TO
PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT
THE CUSTODIAN OF PUBLIC RECORDS AT:**

RECORDS MANAGER

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

7501 NORTH JOG ROAD

WEST PALM BEACH, FL 33412

561-640-4000 EXT. 4606

RECORDSCUSTODIAN@SWA.ORG

- 26.3 The CONTRACTOR shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>) after completion or termination of this Contract. Upon AUTHORITY'S request, CONTRACTOR shall provide AUTHORITY with access to such records during normal business hours at a location within Palm Beach County for purposes of inspection or audit.
- 26.4 Notwithstanding anything herein to the contrary, the CONTRACTOR expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Contract; ii) acting on behalf of the AUTHORITY in the performance of this Contract; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.
- 26.5 Any public records requests directed to, or related in any way to this contract shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager, they shall immediately notify the CONTRACTOR and the CONTRACTOR must provide the records or allow access to the records within a reasonable time. A CONTRACTOR who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.
- 26.6 Therefore, the CONTRACTOR is required to:
- 1) Keep and maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
 - 2) Upon AUTHORITY's request from the AUTHORITY's Records Manager; provide the AUTHORITY with a copy of the requested records to allow the records to be inspected or copied within a reasonable time on the same terms and conditions that the AUTHORITY would provide the records at a cost that does not exceed the cost provided by Florida law;
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the CONTRACTOR does not transfer the records to the AUTHORITY; and
 - 4) Upon completion of the Agreement, transfer at no cost to the AUTHORITY, all public records in possession of the CONTRACTOR or keep and maintain public records to the AUTHORITY upon completion or termination of the Agreement; the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the AUTHORITY, upon request from the AUTHORITY's Records Manager, either during performance of the Agreement or after termination or completion of the Agreement in a format that is compatible with the information technology systems of the AUTHORITY.
- 26.7 Failure of the CONTRACTOR to comply with these requirements shall be a material breach of this Contract.

- 26.8 CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency (FEMA) sub-grantee as required by 2 CFR 200.333. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.
- 26.9 In the event records retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with the State of Florida requirements.

ARTICLE 27 - INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

ARTICLE 28 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO AUTHORITY

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attention: Executive Director
Office No.: 561-640-4000 Fax No.: 561-640-3400

AS TO CONTRACTOR

Phillips and Jordan, Inc.
10142 Parkside Drive
Suite 500
Knoxville, TN. 37922

Attention: Tommy Webster, Program Manager – Disaster Services
Office No.: 865-392-3013 Fax No.: 865-688-8369 E-Mail: twebster@pandj.com

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other

party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and AUTHORITY.

ARTICLE 29 - CONTRACT ADMINISTRATION

Services of CONTRACTOR shall be under the general direction of the **Chief Operations Officer**, or designee, who shall act as the AUTHORITY'S representative during the term of the Agreement.

ARTICLE 30 - KEY PERSONNEL

CONTRACTOR shall notify AUTHORITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. AUTHORITY has the right to reject any proposed changes in key personnel. The following personnel shall be considered key personnel:

Tommy Webster – Contract Manager, Operations/Project Manager
Cell No.: 828-644-3222 E-Mail: twebster@pandj.com

Morgan Pierce – Mission Executive
Cell No.: 919-740-3250 E-Mail: mpierce@pandj.com

Eric Hedrick – Mission/Operations Manager
Cell No.: 813-714-9471 E-Mail: ehedrick@pandj.com

Matthew Mooneyham– Client/Project Manager
Cell No.: 850-530-7151 E-Mail: matthew.mooneyham@phillipsih.com

Heath Stone – Operations/Project Manager
Cell No.: 865-392-3057 E-Mail: hstone@phillipsih.com

ARTICLE 31 – EQUAL BUSINESS OPPORTUNITY PROGRAM:

The Governing Board of the AUTHORITY has implemented the Economic Inclusion Policy administered by the Equal Business Opportunity (EBO) Program Office to ensure that all segments of its business population, including, but not limited to local, small, minority, and women-owned businesses, have an equitable opportunity to participate in the AUTHORITY'S procurement process, in accordance with Section 6.1 through 6.4 of the Purchasing Manual. Program tools and solicitation incentives are hereby referred to as the Affirmative Procurement Initiatives (API).

31.1 Affirmative Procurement Initiative (API):

The AUTHORITY has NOT applied an Affirmative Procurement Initiative to this Agreement.

ARTICLE 32 - SCRUTINIZED COMPANIES

32.1 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

- 32.2 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, this Agreement certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

ARTICLE 33 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

- 33.1 The CONTRACTOR agrees that this Agreement constitutes an offer to all State and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONTRACTOR deem it in the best interest of their business to do so.
- 33.2 The Agreement in no way restricts or interferes with any State or local government agencies of the State of Florida from re-solicitation.

ARTICLE 34 – THIRD PARTY BENEFICIARY DISCLAIMER

It is not the intention of these documents to create third party beneficiary status in any person or entity that is not a direct party to this Agreement, and no language in this Agreement should be construed or interpreted as creating a third party beneficiary.

ARTICLE 35 – E-VERIFY – EMPLOYMENT ELIGIBILITY

- 35.1 The CONTRACTOR certifies, warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended and that CONTRACTOR shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the CONTRACTOR'S subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.
- 35.2 AUTHORITY shall terminate this Agreement if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If AUTHORITY has a good faith belief that one of CONTRACTOR'S subcontractor(s) has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, AUTHORITY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor. If AUTHORITY terminates this Agreement pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by AUTHORITY for a period of one (1) year from the date on which the Agreement was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by AUTHORITY as a result of the termination.

ARTICLE 36 – CONFIDENTIALITY

No reports, information, computer programs, documentation, and/or data given to, or prepared or assembled by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the AUTHORITY.

ARTICLE 37 – PAYMENT ADJUSTMENT SCHEDULE

37.1 The AUTHORITY acknowledges the fluctuating nature of prices.

37.2 Annual Non-Fuel: The Non-Fuel Adjustment shall be applied to those rates subject to adjustment and as provided within this Agreement. For the purpose of this Agreement, the Non-Fuel component is assumed to represent 90% of the CONTRACTOR's costs. Therefore, 90% of the approved rates shall be so adjusted:

The rates shall be adjusted as follows:

The rates shall be adjusted annually, commencing on the first anniversary date, by the change in the Water and Sewer and Trash Collection Services Index, Series ID CUSR0000SEHG, as published by the United States Department of Labor, Bureau of Labor Statistics (www.bls.gov). The change in the index shall be calculated by dividing the average of the index over the twelve-month period ending the December preceding the effective date of the adjustment (January – December 2022) by the average of the index over the twelve-month period from January 2021 through December 2021. The first Annual Non-Fuel adjustment shall be effective May 7, 2023 to May 6, 2024.

For example:

For the Contract year beginning May 7, 2023, the average of the index over the twelve-month period from January 2022 through December 2022 shall be divided by the average of the index over the twelve-month period from January 2021 through December 2021, multiplying the result by ninety (90) percent of the contract or AUTHORITY established price, and subtracting ninety (90) percent of the contract or AUTHORITY established price.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most Recent Year Average / Prior Year Average x .90 x Rate – (.90 x Rate) = Annual Adjustment

Calendar:

Annual Payment Adjustment Calendar

April 2023	April 2024
---------------	---------------

Extension Clause Annual Payment Adjustment Schedule

April 2025	April 2026	April 2027
---------------	---------------	---------------

37.3 **Activation Fuel Adjustment (Fuel Surcharge/Credit)**

The rates subject to adjustment shall be subject to a fuel price surcharge/credit for fluctuations in the price of fuel. For the purpose of this Agreement, fuel is assumed to represent 10% of the Contractor's costs therefore 10% of the approved rates shall be so adjusted. Fuel adjustment shall be calculated and effective upon activation.

The rates shall be adjusted as follows:

For the rates subject to adjustment, a fuel surcharge/credit shall be charged/credited basis based on the percentage change in the average price of fuel as published by the Oil Price Information Service (OPIS) and measured by the OPIS Standard Rack, OPIS No. 2 Distillate Gross Prices, Unbranded Average for Miami, Florida between the month of **January 2022 (Base)** and the most recent month available upon activation.

Fuel Adjustment does not use a floor or ceiling and provides adjustments in either direction without limit.

The surcharge/credit shall be rounded to the nearest cent.

Formula:

Most recent OPIS (at activation) / Base x .10 x Rate – (.10 x Rate) = Fuel Adjustment (for duration of activation)

For example:

Should activation occur October 2023, the fuel surcharge/credit shall be calculated by dividing the reported unbranded average price for September 2023 by the Base (unbranded average price for January 2022), multiplying the result by ten (10) percent of the contract or Authority established price, and subtracting ten (10) percent of the contract or Authority established price.

- 37.4 In the event that either of these indices is no longer available, the parties shall mutually agree to a replacement index. The value of the adjustment will be determined by the AUTHORITY.

ARTICLE 38 – ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

The CONTRACTOR has entered into a contingent Agreement with the AUTHORITY for Hurricane/Disaster Debris Removal, Reduction, and Disposal. The Agreement awarded will be activated on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY may activate, assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action as it determines in its sole and unfettered discretion.

ARTICLE 39 – TASK ORDER/PERFORMANCE

Task Orders shall be executed bilaterally, and the scope of services and format of Task Orders shall be mutually agreed to by the CONTRACTOR and AUTHORITY. Performance will be measured by the metrics established in each Task Order. After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide a written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR default or underperformance by any means it deems in its best interest. CONTRACTOR will be required to provide a daily report of quantity of work performed under each Task Order. The daily report shall be submitted by 11:00 a.m. or earlier the following morning.

ARTICLE 40 – BONDS

CONTRACTOR shall maintain a Proposal Bond in the sum of \$500,000. The CONTRACTOR's Proposal Bond will be

returned to the CONTRACTOR in exchange for and acceptance of an appropriate size bond as determined by the AUTHORITY after assessment of damage and definition of the CONTRACTOR's scope of service. In case of hurricane caused damage, a Category 1 storm would require a \$2,000,000 Bond, a Category II would require a \$4,000,000 Bond, a Category III would require a \$6,000,000 Bond, a Category IV would require an \$8,000,000 Bond, and a Category V would require a \$10,000,000 Bond. The Bond required would be a Performance and Payment Bond, Attachment G. The cost of the Bond is included in the unit rates in the Fee Schedule, Exhibit B. The CONTRACTOR shall maintain the Proposal Bond in effect until the Performance and Payment Bond is submitted to and accepted by the AUTHORITY. If the CONTRACTOR fails to supply a Performance and Payment Bond, the AUTHORITY shall be entitled to retain the Proposal Bond to rectify the CONTRACTOR's unacceptable performance. Pending successful annual CONTRACTOR recertification, the Proposal Bond shall be in effect for the entire term of the Agreement, except for period(s) of time when a Performance and Payment Bond is in effect.

ARTICLE 41 – FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273

- 41.1 This Agreement incorporates all of the provisions set forth in the document commonly known as FHWA Form 1273, Attachment E, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor" as used in Attachment E shall apply to and mean the CONTRACTOR who may be referred to in Attachment E as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONTRACTOR will perform the duties and obligations of the other contracting party regardless of the description or label used in Form 1273, Attachment E.
- 41.2 The CONTRACTOR shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or "linked" to a particular Federal Highway. Wage rate tables may be found at <http://www.dot.state.fl.us/construction/wage.shtm>. Said wage rate tables are incorporated into and made part of this Agreement by reference.

ARTICLE 42 – BUY AMERICA REQUIREMENTS

The CONTRACTOR agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), as they may be amended from time to time) as they relate to Federal-aid contracts and the use of steel and iron produced in the United States. A description of the requirements of Buy America is set forth in Attachment F, which is attached hereto and incorporated by reference as part of this Agreement. CONTRACTOR shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, and FEMA, to the extent applicable.

ARTICLE 43 – DISADVANTAGED BUSINESS ENTERPRISES

- 43.1 This provision shall supplement Article 31 "Equal Business Opportunity Program" of the Agreement. The Agreement is subject to the requirements of 49 CFR Part 26. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13). Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.
- 43.2 The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR's receipt of

payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.

- 43.3 The CONTRACTOR shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONTRACTOR shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation's (FDOT) website found at www.bipincwebapps.com/bizwebflorida/. Audits may be conducted to review payments to DBE subcontractors. The CONTRACTOR will fully cooperate with the AUTHORITY, FDOT, or FEMA regarding the monitoring of subcontractors and payments made thereto.

ARTICLE 44 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

- 44.1 This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONTRACTOR shall verify that neither the CONTRACTOR, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.
- 44.2 The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONTRACTOR must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. CONTRACTOR's certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 45 – ACCESS TO RECORDS AND THEIR RETENTION

- 45.1 This provision shall supplement Article 26 of this Agreement. The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONTRACTOR agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.
- 45.2 The CONTRACTOR shall make all of its books, records, and other documents related, in any manner to its or its subcontractors' performance of the Agreement, available to the AUTHORITY and any other funding entity (e.g. FDOT, FEMA, the Comptroller General of the U.S. or any of their authorized representatives) for the purpose of examination, audit, reproduction, excerpts and transcripts, during normal business hours, at the CONTRACTOR's place of business or if CONTRACTOR's place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONTRACTOR shall also require its subcontractors to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONTRACTOR.

ARTICLE 46 – AUDIT REQUIREMENTS

This provision shall supplement Article 26 of this Agreement. The CONTRACTOR agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONTRACTOR agrees that it will comply, execute any necessary documents and fully cooperate with the AUTHORITY and any State and/or Federal funding agency(ies), including but not limited to FDOT, Florida's Auditor General, FEMA, or any of their authorized representatives, in any audit or monitoring procedures or processes any such entity(ies) may undertake related to CONTRACTOR's performance of the Agreement in order to properly and satisfactorily complete the audit, if any.

ARTICLE 47 – NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONTRACTOR shall cooperate with the AUTHORITY, FDOT, and FEMA so as to assure that all activities related to the performance of this Agreement comply with the requirements of the National NEPA of 1969, as amended, and the regulations and guidance related thereto.

ARTICLE 48 – AMERICANS WITH DISABILITIES ACT

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act of 1990 (42 USC 12102, et seq.), as it may be amended, and all applicable impending regulations of the U.S. DOT, FEMA, and other Federal-aid agencies.

ARTICLE 49 – COMPLIANCE WITH TITLE VI, TITLE VII, AND OTHER FEDERAL LAWS AND REGULATIONS

The CONTRACTOR does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 USC 2000d et. Seq. and 3601 et seq.) and the Age Discrimination and Employment Act of 1967 and Section 303 of the Age Discrimination Act of 1975, as amended (42 USC 6102), and all applicable Federal laws and regulations, policies, procedures, and directives of the U.S.DOT, FEMA and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

ARTICLE 50 – CONVICT LABOR PROHIBITION

The CONTRACTOR does hereby represent and certify that it will comply with the convict labor prohibition in 23 U.S.C. 114, and all implementing regulations thereto.

ARTICLE 51 – CERTIFICATION REGARDING LOBBYING ACTIVITIES

A Bidder or Proposer for an award of certain Federal-Aid contracts in the amount of \$100,000 or more, must file the certification required by 49 CFR Part 2. The CONTRACTOR confirms that by signing and submitting a Bid or Proposal for the work covered by this Agreement, it made the certification described in Section X1 of the Attachment F herein.

ARTICLE 52 – DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

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

ARTICLE 53 – NO OBLIGATION BY FEDERAL GOVERNMENT

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

ARTICLE 54 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

In Witness Whereof, AUTHORITY, and CONTRACTOR have made and executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

WITNESS:

1.


2.

By:

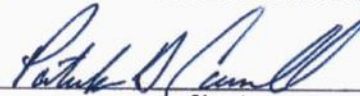
Daniel Pellowitz
Executive Director

(SEAL)

APPROVED AS TO LEGAL SUFFICIENCY:

Howard J. Falcon III
By:  Howard J. Falcon, III
General Counsel

APPROVED AS TO TERMS AND CONDITIONS:


Signature
Patrick D. Carroll
Print Name
COO
Title

ATTEST:

PHILLIPS AND JORDAN, INC.:

Jason Garner
Corporate Secretary

Morgan Pierce
Authorized Signature

WITNESS:

1. Paul Janski

2. Tommy Webster

Morgan Pierce
Print Name

President, Power
Title

4/18/2022
Date

Approved by Authority Board on April 13, 2022, Item No.: 9. C.1

Agreement No. 22-201C

- 18 -



EXHIBIT "A"**SCOPE OF WORK****1. PROJECT DESCRIPTION AND REQUIREMENTS:**

- A. The AUTHORITY seeks COINTRACTOR to remove and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible garbage) from public property and public rights-of-way, and to setup and operate Temporary Debris Management Site(s) (TDMS) in Palm Beach County, Florida, immediately after a hurricane or other disaster.
- B. The objective of this RFP and subsequent contracting activity is to secure the services of an experienced CONTRACTOR who is capable of efficiently removing large volumes of disaster-generated debris from a large area in a safe, timely and cost-effective manner and lawfully disposing of all debris. CONTRACTOR must be capable of assembling, directing, and managing a work force that can complete the debris management operations in 120 days or less. The duration of effort/completion dates of all tasks will be determined jointly by the AUTHORITY and CONTRACTOR. This determination will be set in writing in appropriate Task Order(s).
- C. The CONTRACTOR shall perform all work in strict accordance with Federal Emergency Management Agency (FEMA) guidelines in order to maximize recovery of reimbursable expenses. This task shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished.
- D. The CONTRACTOR may be required, at the AUTHORITY'S discretion, to be under the direction of an agent of the AUTHORITY.
- E. While intended to cover debris management needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to Palm Beach County, Florida. The planning standards used for this project are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida. The AUTHORITY intends to enter into contingency Agreement(s) as further defined herein, to provide emergency debris removal and disposal services as required by the AUTHORITY.

2. INTRODUCTION:

- A. The AUTHORITY'S disaster recovery planning includes considerations for removing and processing the volumes and types of debris expected to be generated by a major disaster such as a hurricane or major flood and includes procedures for disposing of that debris. The planning approach is formulated in part on the concept of strategic pre-positioning of plans and resources necessary for timely, safe, coordinated recovery operations, including removal of debris from public property and rights-of-way throughout Palm Beach County using a combination of county, municipal, and CONTRACTOR forces.
- B. If activation is required, the AUTHORITY intends to activate contracts on an as-needed basis as solely determined by the AUTHORITY. The AUTHORITY intends to activate the CONTRACTORS in the order of final ranking as best meets the needs of the AUTHORITY. The AUTHORITY reserves the right in its sole and unfettered discretion, to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the

EXHIBIT "A"

circumstance(s), the event, or any other condition which may warrant such action.

- C. The AUTHORITY envisions the need for four (4) CONTRACTORS to carry out the debris removal and disposal work throughout Palm Beach County. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and to cover the expenses associated with a major recovery operation prior to the initial AUTHORITY payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel, comprehensive debris removal, volume reduction operations plan, and demonstrable experience in major disaster recovery projects.
- D. The Agreement(s) to be awarded under this RFP will be contingency Agreement(s) that will be activated only in the face of an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until the Agreement is activated either in anticipation of a natural disaster or immediately after such disaster.
- E. The CONTRACTOR who receives an Agreement for the work, will be required to participate in certain AUTHORITY directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the AUTHORITY.
- F. The AUTHORITY does not guarantee a CONTRACTOR will be activated if awarded an Agreement.

3. PLANNING STANDARD FOR DEBRIS REMOVAL AND DISPOSAL:

The AUTHORITY'S goal is to complete the debris removal and disposal process in 120 days following the storm event. This assumes that the entire area of the county will be accessible within that period. Due to the low elevation and potential for flooding, some areas might not be accessible for several weeks after a major natural disaster. The CONTRACTOR must be aware that it might not be possible to initiate operations in all parts of the county simultaneously immediately after a storm.

4. DEBRIS MANAGEMENT:

- A. Planning for debris management operations is a function of the AUTHORITY as a supporting agency to the Palm Beach County Department of Engineering and Public Works. The AUTHORITY'S Emergency Management Coordinator will direct the debris removal and disposal operations.
- B. In addition to using AUTHORITY forces and equipment, the AUTHORITY intends to execute four (4) debris removal and disposal Agreements on a contingency basis for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the AUTHORITY in the aftermath of a major disaster. Each CONTRACTOR holding a debris removal and disposal Agreement will serve as a General CONTRACTOR for the purpose of debris removal and disposal operations and will be able to use his/her own and subcontractor resources to meet the obligations of the Agreement. It is anticipated, but not required, that the CONTRACTOR will use both local and non-local subcontractors.

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- C. When a major disaster occurs or is imminent, the AUTHORITY intends to contact the highest two (2) or three (3) ranked CONTRACTORS holding debris removal and disposal Agreements to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will generally be limited to debris in, upon, or brought to county residential private and public streets and roads, rights-of-way, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations. Disposal of debris will be at AUTHORITY approved TDMS or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all TDMS.
- D. When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order, to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane or major flood. Depending on the nature of the storm and circumstances, the AUTHORITY may activate more than one (1) CONTRACTOR. CONTRACTOR(S) will generally be activated in order of final ranking.
- E. Specific task orders will be issued to select CONTRACTORS based on the best interest of Palm Beach County. The AUTHORITY reserves the right to assign work or task orders to various CONTRACTORS based on capability. The AUTHORITY does not guarantee a cradle to grave pricing arrangement but reserves the right to pick and choose CONTRACTORS based on ranking.
- F. The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.
- G. The AUTHORITY will make every effort to identify strategically located public and private TDMS throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional public and private TDMS will be identified as needed.
- H. The CONTRACTOR will operate the public and private TDMS and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate TDMS. The CONTRACTOR is responsible for all activity at TDMS operated by their subcontractor and must have an employee on site at all times to oversee daily operations. **The locations of both publicly and privately owned sites currently under consideration are shown on Attachment B.** Additional public and privately owned TDMS may become available as plans develop. The availability of both private and public TDMS may change during the term of the Agreement.

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- I. The AUTHORITY may also establish designated homeowner drop-off sites on a public right-of-way (PROW) for communities. The CONTRACTOR will be responsible for removing all eligible debris from those approved designated locations at the direction of the Emergency Management Coordinator or designee.
- J. Curbside segregation of debris and disaster-generated or related wastes will be an element of the AUTHORITY'S disaster recovery program. The debris removal and disposal CONTRACTOR will be required to aid in the segregation and waste stream management processes. Any Household Hazardous Waste (HHW) encountered by the debris removal CONTRACTOR is to be set aside. HHW disposal will be the responsibility of the resident. The AUTHORITY will designate HHW drop-off locations.
- K. The following items are considered HHW for the purpose of this Agreement:
 - 1. Used Oil
 - 2. Batteries
 - 3. Paint
 - 4. Aerosol spray cans
 - 5. Pesticides
 - 6. Antifreeze
 - 7. Fluorescent light bulbs
 - 8. Propane tanks (household size)
- L. The CONTRACTOR will setup a lined containment area and separate any HHW inadvertently delivered to a TDMS.
- M. Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will be set aside for collection and disposal by a Hazardous Materials Removal and Disposal Contractor who will be selected by the AUTHORITY.
- N. Putrescible residential garbage will be collected by AUTHORITY franchise waste haulers and is not to be collected or transported by CONTRACTOR forces. The AUTHORITY may enter into a separate emergency debris removal agreements with each franchise hauler to operate their dedicated self-loading collection equipment within their Service Area for FEMA eligible storm debris removal.

5. SCOPE OF WORK/OVERVIEW:

This section is divided into three (3) subsections:

- 5.1 Debris Removal and Disposal Operations** from residential public and private streets, roads and rights-of-way and delivered to a TDMS designated by the Authority.
- 5.2 TDMS Operations** which includes daily operations as well as reclamation of the site to its pre-storm condition or as directed by the AUTHORITY Emergency Management Coordinator
- 5.3 Processing, Loading and Hauling Material** from TDMS to final destination.

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- A. Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, timeframe for completion, rates to be used, etc. Any job with requirements or rates not covered by this Proposal will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest at the CONTRACTOR'S expense.
- B. The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.
- C. The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.
- D. The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY's Director, Customer Information Services prior to issuance of the first Task Order.
- E. The quantity of work required to complete the Agreement resulted from this RFP is estimated. The actual effort required may be more or less than the estimated amount shown in the Proposal Form 3 – Price Proposal. Payment will be made at the unit rates proposed. The output will be verified by the AUTHORITY's Director, Customer Services in the daily operational report. Should hourly rates be used to pay for certain equipment other than preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.

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- F. The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no additional cost to the AUTHORITY.
- G. The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- H. The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

6. DEBRIS REMOVAL AND DISPOSAL OPERATIONS

6.1 General:

- A. The purpose of this section is to define the requirements for debris removal and disposal operations after any catastrophic disaster within Palm Beach County. The AUTHORITY may designate zones for collection and disposal locations for debris collected. CONTRACTORS will be tasked with a service area(s) for this specific work immediately after the activation of the Agreement.
- B. For work performed on a Time and Materials basis, all hourly equipment rates shall include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, and all other costs associated with the equipment including labor and operator.

6.2 Services:

- A. The CONTRACTOR shall provide equipment, operators, and laborers for debris removal operations. The CONTRACTOR shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, and repairs) all equipment under this Agreement.
- B. All rates are to include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and all other costs.
- C. The work shall consist of clearing and removing disaster generated debris as directed by the AUTHORITY Emergency Management Coordinator. CONTRACTOR shall provide collection equipment the day following a natural disaster or as directed by the AUTHORITY and shall provide equipment sufficient to collect a minimum of 50,000 cubic yards of debris per day within ten (10) calendar days of collection commencement (Past AUTHORITY natural disaster cleanup records show that ten (10) days' following disaster, 95,000-126,000 cubic yards of debris collected per day). Failure to provide sufficient equipment necessary to collect required amount may result in the AUTHORITY entering into a separate agreement with another contractor for collection services.

EXHIBIT "A"**6.2.1 Removal of Hazardous Leaning Trees and Hanging Limbs**

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous trees twelve inches (12") or greater in diameter, measured three feet (3') from the base of the tree or chest height and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way. Further, debris generated from the removal of hazardous trees and hanging limbs two inches (2") or greater existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Hazardous leaning trees less than twelve inches (12") in diameter, measured three feet (3') from the base of the tree or at chest height, will be flush cut, and placed on the public right-of-way to be removed as vegetative debris. The AUTHORITY will not compensate the CONTRACTOR for leaning trees less than twelve inches (12") in diameter on a unit rate basis.
- b) Removal and transportation of hazardous trees twelve inches (12") or greater in diameter and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of leaning trees will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for leaning or hazardous trees to be removed and eligible for reimbursement, the tree must satisfy a minimum of one (1) of the following requirements:
 - i) The tree is leaning in excess of 30° degrees in a direction that poses an immediate threat to public health, welfare, and safety.
 - ii) The tree is dead, twisted, or mangled as a direct result of the storm and a certified arborist can attest to the fact that the tree will die and potentially create a falling hazard to the public.

6.2.2 Removal of Hazardous Stumps

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous uprooted stumps 24 inches or greater in diameter, measured 24 inches from the base of the tree existing in private and public right-of-way. Further, debris generated from the removal of uprooted stumps existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Stumps measured 24 inches from the base of the tree and less than 24 inches in diameter will be considered normal vegetative debris and removed in accordance with 3.1.2. The AUTHORITY will not compensate hazardous stumps less than 24 inches in diameter on a unit rate basis and instead will be considered normal vegetative debris. The diameter of stumps less than 24 inches will be converted into a cubic yardage volume based on the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines) and removed under the terms and conditions of 2.6.2.
- b) Removal and transportation of hazardous uprooted stumps existing in the

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private and public right-of-way and private property will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of hazardous stumps will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for hazardous stumps to be removed and eligible for reimbursement, the stump must satisfy the following requirement:

- (i) Over 50% of the tree crown is damaged or broken and heartwood is exposed.
- (ii) Tree stumps that are not attached to the ground will be considered normal vegetative debris and subject to removal under the terms and conditions of 2.1. The cubic yard volume of the unattached stump will be based off of the diameter conversion using the published FEMA stump conversion table (In accordance with current FEMA public assistance guidelines).

The AUTHORITY or its representative will measure and certify all stumps before removal.

6.2.3 Collection of Storm Generated Residential Vegetation and Construction and Demolition Debris:

- a) It is the AUTHORITY'S goal to ensure that Vegetation and Construction/Demolition debris remain separate task orders for the collection of Vegetation and Construction loads. Mixing of loads by the CONTRACTOR at the road right of way will not be tolerated.

Work may include:

- (i) First pass to clear debris from emergency evacuation routes, access roads to critical facilities and all primary roadways.
- (ii) Clearing debris from residential private and public road right of ways.
- (iii) Loading the debris.
- (iv) Hauling the debris to an approved AUTHORITY TDMS or an authorized private construction demolition debris recycling facility or landfill.
- (v) Dumping the debris at the TDMS or direct haul to an Authority permitted approved private Construction and Demolition Debris (C&D) recycling facility or Authority authorized landfill.
- b) Debris delivered to a TDMS, private C&D recycling facility or authorized landfill will be paid based on the per cubic yard price according to the Proposal Form 3 – Price Proposal.

6.2.4 Hourly Rate Clearing:

- a) From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:
 - (i) Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.

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- (ii) Perform emergency removal of debris if needed for life-saving measures.
 - (iii) Conduct daily briefings with debris managers and other officials to update progress and discuss issues.
 - (iv) Develop a traffic control plan along potential haul routes and at debris management and disposal sites.
- b) The CONTRACTOR shall not move from one designated Collection Zone to another area without prior approval from the AUTHORITY's Director, Customer Information Services or designee. CONTRACTORS and/or subcontractors that move to a designated Collection Service Area without prior AUTHORITY approval may be terminated immediately. The AUTHORITY reserves the right to relocate CONTRACTOR to other Collection Service Areas based on need and ability to perform required work at an acceptable level. The AUTHORITY reserves the right to immediately terminate CONTRACTOR and any subcontractor who fails to provide service in strict accordance with guidelines set forth by FEMA and the AUTHORITY.
- c) The AUTHORITY or designee shall forward all claims of damage to the CONTRACTOR daily. CONTRACTOR shall provide all contact information, including name, phone number, cellular phone number, fax number and email address, for personnel responsible for resolving all claims of damage. CONTRACTOR must respond to all claims of damage within 24 hours and resolve within ten (10) calendar days. Mailboxes must be repaired or replaced within two (2) calendar days. CONTRACTOR is responsible for all damage caused by his crew and/or subcontractors in the performance of debris removal.
- d) In the event the CONTRACTOR fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided in this Agreement, the AUTHORITY or designee may arrange for the repairs and assess the CONTRACTOR for the cost of the repairs and any applicable administrative charges. Any disputes as to damage responsibility will be presented to the Director, Customer Information Services or designee for review. The decision of the Director, Customer Information Services or designee will be final.

6.3 Equipment:

- A. All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:
 - 1. Fencing must be permanently attached to one side of the truck bed.
 - 2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
 - 3. Fencing must extend to the bottom of the bed.

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4. After loading, bottom of fencing shall be tight against the bed of the truck and secured at a minimum of two locations.
 5. Solid iron metal bars must be secured to both sides of the fencing.
 6. There shall be no hand loaded equipment allowed.
- B. The AUTHORITY or designee shall complete certifications indicating the type of vehicle, make and model, license plate number, equipment number, and measured maximum volume, in cubic yards, of the load bed of each piece of equipment utilized to haul debris. The measured volume of each piece of equipment shall be calculated from actual internal physical measurement performed and certified by the CONTRACTOR. Maximum volumes may be rounded up to the nearest cubic yard. The reported measured maximum volume of any load bed shall be the same as shown on the placards affixed to each piece of equipment. The AUTHORITY reserves the right to re-measure trucks and trailers at any time to verify reported capacity. If a truck and/or trailer are re-measured and the yardage capacity is determined to be lower, the lower yardage volume will be retroactive to the initial load and total volume adjusted accordingly.
- C. All trucks and trailers utilized in hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. If installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and remarked. All extensions to the bed are subject to acceptance or rejection at the sole discretion of the AUTHORITY or designee.
- D. Trucks or equipment designated for use under this Agreement shall not be used for any other work during working hours. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement. Under no circumstance will the CONTRACTOR mix debris hauled for others with debris hauled under this Agreement. Failure to comply will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to provide any additional emergency debris collection services. Any and all unapproved changes to placard will result in no payment to CONTRACTOR and the operator and vehicle will be declared ineligible to perform any additional emergency debris collection services.

6.4 Securing Debris

The CONTRACTOR shall be responsible for properly and adequately securing debris on each piece of equipment utilized to haul debris. Prior to leaving the loading site, the CONTRACTOR shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted during loading and secured during transport. Tarps or other coverings shall be provided by the CONTRACTOR to prevent materials from falling or being blown from the bed. Loads not properly tarped or otherwise covered will not be allowed to dispose at any AUTHORITY approved TDMS which may result in non-payment to CONTRACTOR.

EXHIBIT "A"**6.5 Equipment Signage**

Prior to commencing operations, the AUTHORITY or designee shall affix to each piece of equipment, signs or markings indicating the Owner Operator's name and a unique equipment identification number. One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Each operator shall keep AUTHORITY certification with them at all times. Placards must remain on both sides of equipment.

6.6 Other Considerations

- A. The CONTRACTOR shall assign and provide an Operations Manager (OM) to the AUTHORITY TDMS to serve as the principal liaison between the AUTHORITY Director, Customer Services or designee and the CONTRACTOR'S forces. The assigned OM must be knowledgeable of all facets of the CONTRACTOR'S operations and have authority in writing to commit the CONTRACTOR. The OM shall be on call 24 hours per day, seven (7) days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for onsite accommodations. This linkage shall provide immediate contact via cell phone, Fax machine, and have Internet capabilities. The OM will participate in daily meetings and disaster exercises, functioning as a source to provide essential element information. The OM will report to the AUTHORITY Director, Customer Services or designee. This position will not require constant presence; rather the OM will be required to be physically capable of responding to the AUTHORITY Emergency Management Coordinator within 30 minutes of notification.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.
- C. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- D. Payment for debris hauled will be based on the quantity of debris hauled in cubic yards. Debris hauled to a TDMS will require a validated load ticket. Drivers will be given an electronic load tickets at the loading site by an AUTHORITY loading site monitor. The quantity of debris hauled will be estimated in cubic yards at the TDMS by an AUTHORITY TDMS monitor. The estimated quantity will be recorded on the electronic load ticket. The AUTHORITY TDMS monitor will retain one copy of the paper load ticket and the driver will retain the remaining copies of the load ticket. Debris being hauled to a permanent landfill will be paid based on cubic yards recorded on an approved electronic or paper load ticket. Payment will be made against the CONTRACTOR'S invoice once site monitor and CONTRACTOR load tickets and/or scale tickets match. Load tickets not properly completed and signed will not be paid.

EXHIBIT "A"**7. TEMPORARY DEBRIS MANAGEMENT SITES (TDMS) OPERATIONS****7.1 General**

- A. The purpose of this section is to define the requirements for TDMS Operations after any catastrophic disaster within Palm Beach County.
- B. The CONTRACTOR shall use only TDMS designated by the AUTHORITY Emergency Management Coordinator.
- C. The TDMS foreman shall direct all vehicular traffic and load drop-off operations. Different types of debris shall be kept in separate piles at the TDMS. At a minimum, one flag person shall be posted at each TDMS for traffic control and to direct unmixed loads to proper location (by debris type) to be offloaded. CONTRACTOR shall be responsible for sorting and proper placement of all loads not dumped in appropriate location which results in mixing the once separated debris at no charge to the AUTHORITY.
- D. The CONTRACTOR shall begin grinding vegetative debris within five (5) calendar days of TDMS opening date and removing mulch/wood chips within ten (10) calendar days of site opening date. It is very important your plan provides specific information for the final disposal destination location of the mulch / wood chips removed from the public or private TDMS. The CONTRACTOR shall begin removal of Construction and Demolition/mixed debris from TDMS to an approved final destination within five (5) days of site opening date.

7.2 TDMS Services

7.2.1 Site Setup/Preparation and Site Closeout/Restoration Site setup/preparation and site closeout/restoration shall be compensated on a time and materials basis in accordance with the hourly rates provided in the Proposal Form 3 – Price Proposal. Site set-up/preparation/closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, limerock or crushed concrete access roads, seeding, and any other similar activity necessary to make the site usable for its intended purposes and to return the site to its original condition. Do not include any materials in calculating the hourly rates in the Proposal Form 3 - Price Proposal. Important- Phase I TDMS Reclamation is included in the 2.0 cubic yard price. Phase I Reclamation requires the contractor to remove all debris from the TDMS including small particles mixed with soil and grading the entire area. The only site closeout cost will be removal of road base material and seeding as approved by the Authority.

7.2.2 TDMS Operations and Material Processing

- a. TDMS operations and material processing shall be compensated in accordance with the unit prices provided in the Proposal Form 3 - Price Proposal. The CONTRACTOR shall provide equipment, operators, and laborers for TDMS operations as specified by Task Order. Unit prices provided in the Proposal Form 3 - Price Proposal, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance)

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all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each TDMS. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the TDMS. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and any other costs. The work shall consist of managing the operations of a TDMS and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator

- b. The AUTHORITY plans to use two types of TDMS.
 1. Vegetative TDMS will be devoted to the reduction of clean woody debris by either burning or grinding. The AUTHORITY expects the material to be recycled and or beneficially re-used if processed by grinding. It is important to provide a detailed plan on how this material will be recycled or beneficially reused after grinding / reduction.
 2. Depending upon the size and type of devastation the AUTHORITY may require a separate Construction & Demolition (C&D) staging area, mixed debris staging area and a separate Household Hazardous Waste staging area. The AUTHORITY requests that PROPOSER implements recycling and or reduction programs to minimize the quantity of construction debris material to be land filled.
- c. Material coming into the Vegetative or C&D TDMS will be measured and paid for by the cubic yard according to the Proposal Form 3 – Price Proposal. Material removed and transported from a C&D TDMS will be measured and paid by the cubic yard according to the Proposal Form 3 – Price Proposal.
- d. Locations of all TDMS will be approved by the AUTHORITY. The AUTHORITY Emergency Management Coordinator must approve site improvements before work begins and any costs, other than those in the Proposal Form 3 – Price Proposal, that might have been negotiated under a Task Order shall be documented for payment.
- e. Material processed at a TDMS by either grinding or burning will be measured using cubic yards from incoming load tickets. Material entering a TDMS will be

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deposited in manageable piles.

7.3 Reporting

The CONTRACTOR shall submit a report to the AUTHORITY Emergency Management Coordinator or designee by close of business each day of the term of the Task Order. Each report shall contain, at a minimum, the following information:

1. Contractor's Name
2. Contract Number
3. Daily and cumulative hours for each piece of equipment, *if appropriate*
4. Daily and cumulative hours for personnel, by position, *if appropriate*
5. Volumes of debris handled

Failure to provide audit quality information by 5:00 p.m. of the following day of operation will subject CONTRACTOR to non-payment in each instance at the sole discretion of the AUTHORITY.

7.4 Other Considerations

- A. The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- B. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. In the event a TDMS must be closed due to CONTRACTOR equipment or operational failures, CONTRACTOR shall be liable for liquidated damages in the amount of \$25,000.00 per day for every day the site has to remain closed.

7.5 Debris Clearance (for access) from Right-of-Ways and Public Property

- A. The AUTHORITY provides support to Palm Beach County Government for Debris Management, including the clearance (moving debris from the middle of the road, etc.) of debris from right-of- ways and public property. Palm Beach County intends to perform debris clearance for access with its own forces or under existing contractual Agreements between the County and local firms. However, in a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner.
- B. This debris clearance is to be considered supplemental and optional service. It is anticipated that debris clearance activities would be conducted, if needed, on a time and material basis using the rates in the Proposal Form 3 – Price Proposal.

EXHIBIT "A"**8. PROCESSING, LOADING AND HAULING MATERIAL:**

CONTRACTOR shall provide all necessary labor, material and equipment to process, load and haul wood chips from TDMS in Palm Beach County to final destination for disposal. CONTRACTOR shall provide all necessary labor, material and equipment to load and haul construction and demolition debris and/or mixed debris from TDMS as directed by the AUTHORITY. The AUTHORITY reserves the right to contract with other firms to process, load and haul wood chips and construction and/or mixed debris to a final destination as may best meet the needs of the AUTHORITY. All wood chips, construction and/or mixed debris shall be disposed of in accordance with all Local, State of Florida and Federal guidelines.

CONTRACTOR will provide detailed listing to the AUTHORITY of the following:

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch / reduced yard waste material generated at TDMS is disposed, to include address/GPS location.
4. AUTHORITY will determine final private or public Construction/Demolition debris disposal/recycling facility.

9. MISCELLANEOUS REQUIREMENTS**9.1 TDMS Foreman**

- A. The TDMS foreman must be an employee of the CONTRACTOR and is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety.
- B. The TDMS foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Services or designee.

9.2 TDMS Night Foreman

- A. The TDMS night foreman must be an employee of the CONTRACTOR and is responsible for managing all night operations approved by the AUTHORITY.
- B. The TDMS night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Director, Customer Information Services or designee.

9.3 TDMS Management Plan

- A. Once the TDMS is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.
- B. Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:
 1. Access to site
 2. Site preparation -clearing, erosion control, and grading
 3. Traffic control procedures

EXHIBIT "A"

4. Safety
5. Segregation of debris
6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
8. Specific plan including and location for the final disposal destination of the mulch/wood chips generated at the public or private TDMS.

9.4 Inspection Tower

The CONTRACTOR shall construct an inspection tower at each TDMS within three (3) calendar days of natural disaster. The tower shall be constructed using pressure treated wood or steel scaffold. The floor elevation of the tower shall be 10-feet above the existing ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Inspection towers must provide a dry area for employees and meet all FEMA and OSHA requirements.

9.5 Grinding Operation

The CONTRACTOR shall have grinder(s) on site and in operation within five (5) calendar days following a natural disaster. Failure to provide sufficient grinding capacity to accommodate expected incoming volumes and allow site to operate in an efficient manner within five (5) calendar days shall result in liquidated damages of \$10,000 per day. There shall be no period longer than 24 hours in which grinding activity may stop due to equipment or operational failure. Failure to provide back-up equipment within 24 hours shall result in liquidated damages of \$2,000 per hour per approved hours of grinding operation per day until grinding activity resumes.

9.6 Household Hazardous Waste Containment Area

The CONTRACTOR shall construct a hazardous material containment area at each TDMS. The area shall be 30' x 30'. The perimeter shall be lined with hay bales and staked in place. The area shall be lined with a heavy gage plastic to provide a waterproof barrier. Additional plastic sufficient to cover the area is required to prevent rain from entering the containment area. Site run-off must be redirected from the containment area by site grading.

10. PERFORMANCE OF CONTRACTOR

- A. It is the intent of this Agreement to ensure that the CONTRACTOR provides a timely quality level of services. To this end, all complaints received by the Emergency Management Coordinator or designee and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.

EXHIBIT "A"

- B. The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:
 - 1. Failure to open pre-storm identified sites within three (3) calendar days of after being tasked by the AUTHORITY liquidated damages of \$10,000 per day for each day not opened.
 - 2. Closure of TDMS due to CONTRACTOR equipment or operational failures liquidated damages of \$25,000 per day, for each day site must remain closed.
- C. Failure to provide back-up grinder(s) within 24 hours of equipment breakdown liquidated damages of \$2,000 per hour per approved grinding hours of operation per day.
- D. CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each occurrence of the following infractions:
 - 1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.
 - 2. Loads not properly tarped or otherwise covered.
 - 3. Mixing debris hauled from other sources with debris hauled under this Agreement.
 - 4. Mixing vegetation debris with C & D material.
- E. CONTRACTOR may be immediately terminated and not paid for the following:
 - 1. Collection of any non-eligible, non-AUTHORITY approved stumps or debris.
 - 2. Moving to another designated Collection Service Area without prior AUTHORITY approval.
 - 3. Failure to provide service in accordance with guidelines set forth by FEMA and the AUTHORITY.
 - 4. Soliciting work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement.
 - 5. Alteration of placards placed on certified trucks and/or trailers.

Any disputes regarding Performance of Contractor will be presented to the Emergency Management Coordinator or designee for review. The Emergency Management Coordinator or designee shall complete review and make determination within three (3) calendar days. Decisions of the Emergency Management Coordinator or designee shall be final.

EXHIBIT "B"

FEE SCHEDULE

PROPOSAL FORM 3 – PRICE PROPOSAL

PART A – VOLUME BASED PRICING FOR 3,000,000 CUBIC YARD (CY) DEBRIS DISASTER

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated TDMS.				
A. Vegetation	2,500,000	CY	9.90	24,750,000
B. Construction Debris / Mixed Debris	500,000	CY	9.90	4,950,000
2.0 TDMS operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and Phase I Reclamation.	3,000,000	CY	2.35	7,050,000
3.0 Processing of debris through grinding and/or chipping.	2,500,000	CY	2.70	6,750,000
4.0 Loading, hauling and disposing wood chips to final destination. <i>(This rate includes disposal cost)</i>	1,000,000	CY	9.60	9,600,000
5.0 Volume reduction through air curtain incineration.	2,500,000	CY	2.40	
6.0 Loading and hauling of construction debris and/or mixed debris from TDMS to a permitted C&D recycling facility or any other designated Disposal Facility. <i>(This rate shall not include disposal cost). Based on miles from TDMS to final destination– 1 way.</i>				
A. 0 ≤ 20 miles	500,000	CY	4.80	
B. > 20 ≤ 50 miles	500,000	CY	6.60	
C. > 50 ≤ 100 miles	500,000	CY	8.70	
AVERAGE: (Item 6.0 A-C)			6.70	
AVERAGE: (Item 6.0 A-C) X 500,000 CY =				\$ 3,350,000
TOTAL PROPOSAL PRICE: (Items 1.0 - 4.0; 6.0)				\$ 56,450,000

PROPOSER MUST PROVIDE PRICE FOR ALL LINE ITEMS 1 THRU 6. FAILURE TO DO SO MAY RENDER YOUR PROPOSAL TO BE DEEMED NON-RESPONSIVE.

Unit Prices, unless otherwise indicated, shall include all labor (operators, laborers, supervisors) and materials including but not limited to: supplies, equipment maintenance, repairs, repair parts, fuels, lubricants, cellular phones, transportation, and housing, if required, necessary to accomplish the project. The quantities and distributions are estimated for the purpose of making an award. Locations of sites, debris quantities, destinations, material densities, etc. may differ substantially in an actual disaster.

Assumptions: 3,000,000 cubic yards of debris consisting of 2,500,000 cubic yards of vegetation debris and 500,000 cubic yards of mixed debris.

EXHIBIT "B"**PROPOSAL FORM 3 – PRICE PROPOSAL****PART B – HOURLY RATES**

TOMS SET-UP AND CLOSURE AND DEBRIS CLEARANCE FOR ACCESS - OPTIONAL USE BY COUNTY AND OTHER GOVERNMENTAL ENTITIES			
EQUIPMENT AND LABOR RATES			
EQUIPMENT TYPE	HOURLY EQUIPMENT RATE	HOURLY LABOR RATE	TOTAL HOURLY RATE
Bobcat Loader	46.31	50.21	96.52
Crew Foreman w/ Cell Phone and Pickup	13.19	63.60	76.79
Dozer, Tracked, D5 or similar	54.45	50.21	104.66
Dozer, Tracked, D6 or similar	81.39	50.21	131.60
Dozer, Tracked, D7 or similar	115.88	50.21	166.09
Dozer, Tracked, D8 or similar	145.56	50.21	195.77
Dump Truck, 18 CY-20 CY	54.88	41.84	96.72
Dump Truck, 21CY-30 CY	62.92	41.84	104.76
Generator and Lighting	11.69	N/A	11.69
Grader w/ 12' Blade	85.50	50.21	135.71
Hydraulic Excavator, 1.5 CY	67.61	50.21	117.82
Hydraulic Excavator, 2.5 CY	98.13	50.21	148.34
Knuckleboom Loader	175.25	50.21	225.46
Laborer w/ Chain Saw	4.25	42.17	46.42
Laborer w/ small tools, traffic control, flag person	11.50	33.48	44.98
Lowboy Trailer w/ Tractor	85.44	41.84	127.28
Operations Manager w/ Cell Phone and Pickup	13.19	108.80	121.99
Pickup Truck, 5 Ton	13.19	N/A	13.19
Soil Compactor 81 HP+	60.19	50.21	110.40
Soil Compactor to 80 HP	53.00	50.21	103.21
Soil Compactor, Towed Unit	51.88	50.21	102.09
Truck, Flatbed	32.59	41.84	74.43
Tub Grinder, 800 to 1,000 HP	523.57	50.21	573.78
Water Truck	67.13	41.84	108.97
Wheel Loader, 2.5 CY, 950 or similar	71.45	50.21	121.66
Wheel Loader, 3.5-4.0 CY, 966 or similar	136.88	50.21	187.09
Wheel Loader, 4.5 CY, 980 or similar	149.00	50.21	190.21
Wheel Loader-Backhoe, 1.0-1.5 CY	55.13	50.21	105.34
Other – Please List			

Attach additional sheet with equipment type and labor rates, if needed

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EXHIBIT "B"**PROPOSAL FORM 3 – PRICE PROPOSAL****PART C – UNIT COST SCHEDULE**

ITEM	HAZARDOUS STUMP REMOVAL, HAULING, AND DISPOSAL	UNIT	UNIT COST
1.	24-inch diameter to 48.99-inch diameter	Stump	450.00
2.	49-inch diameter and greater	Stump	675.00
3.	Stump Fill Dirt – Fill dirt for stump holes after removal	CY	25.00
HAZARDOUS HANGING LIMBS (HANGERS), AND HAULING To include removal of all hanging limbs. Limbs to be cut and placed on the right of way for collection as vegetative debris.			
4.	2-inch diameter and greater	Tree	110.00
HAZARDOUS TREE REMOVAL, AND HAULING Trees to be flush cut at ground level and placed on the right of way for removal as vegetative debris.			
5.	6-inch diameter to 12.99-inch diameter	Tree	100.00
6.	13-inch diameter to 24.99-inch diameter	Tree	200.00
7.	25-inch diameter to 48.99-inch diameter	Tree	375.00
8.	49-inch diameter and greater	Tree	525.00

NOTE:

The following is information only and will NOT be considered in the evaluation of this RFP

The AUTHORITY reserves the right to use this contract to handle small quantities of debris removal and as support for our Franchise Contracts as needed. Below is a daily rate to remove debris. The AUTHORITY will pay for the disposal cost. There is no requirement to provide a rate, however if you do, we expect your company to honor this special service and respond within 48 hours at the rate below.

COLLECTION SERVICE ONLY	
EQUIPMENT	DAILY RATE (10 HRS/DAY)
Knuckleboom Loader and Operator	\$2,750.00

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January 2022

ATTACHMENT "A"**SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY**

7501 North Jog Road
 West Palm Beach, Florida 33412
 Telephone: 561-640-4000 • Fax: 561-640-3400

**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No.

In accordance with _____ (Contractor) contract, with the Solid Waste Authority of PBC, Florida, (AUTHORITY) Agreement No. _____ for Hurricane/Disaster Debris Removal, Reduction, and Disposal dated _____ the AUTHORITY hereby requests and authorizes the services to be performed on the project as described below:

Project: _____

Specific Work to be performed: _____

Duration of Work (Include Start Date, End Date and Total Calendar Days): _____

Method of Payment: _____

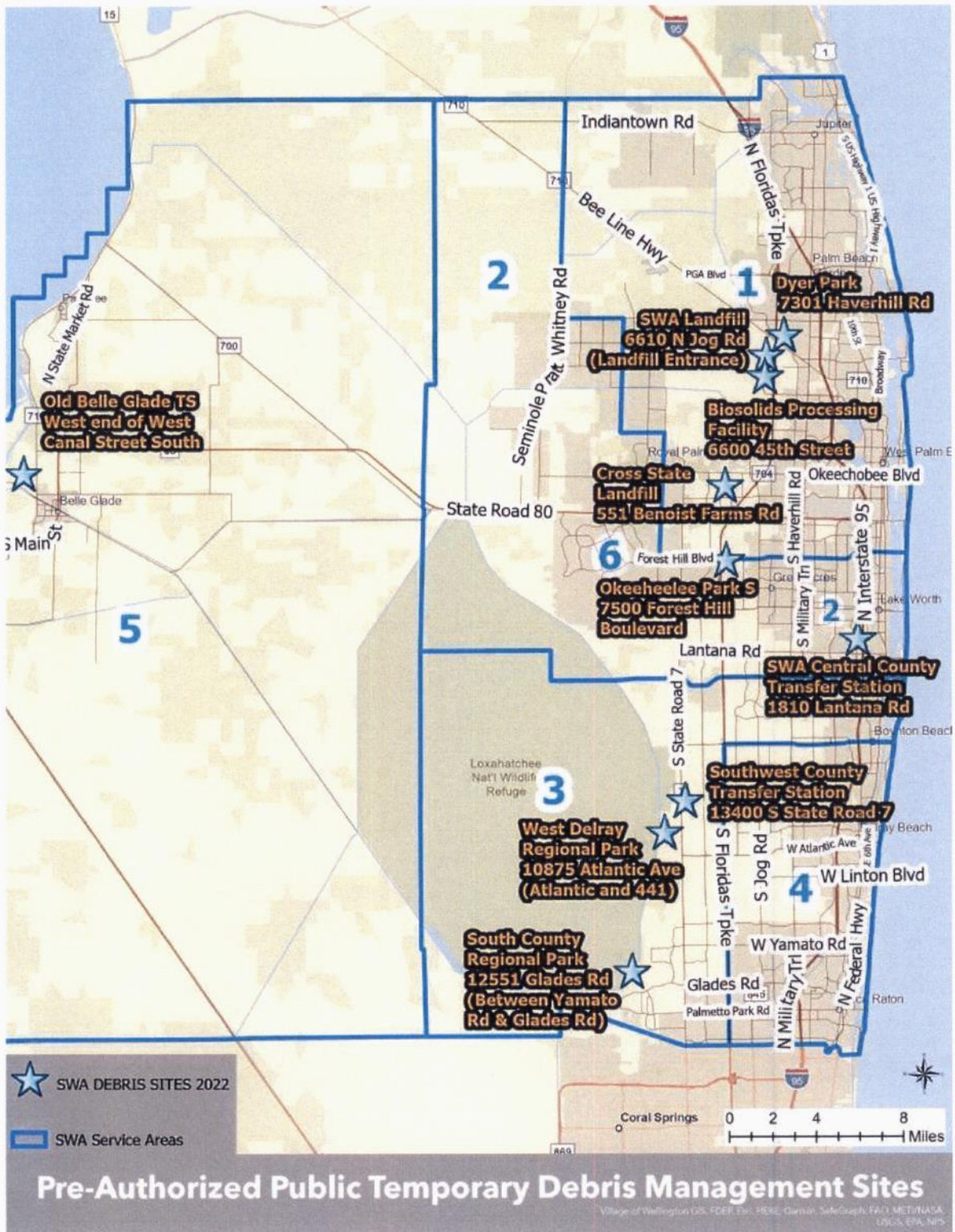
Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ Date: _____

AUTHORITY Signature: _____ Date: _____

SWA Use Only			
SWA Requestor/Monitor:	_____	Date:	_____
SWA Dept. Director:	_____	Date:	_____
Vendor No.:	_____	Account No.:	_____
Purchasing:	_____	Budget:	_____
		Project:	_____
		Accounting:	_____

ATTACHMENT "B"



ATTACHMENT "C"

PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE

The Public Assistance Program and Policy Guide, Version 4, Effective June 1, 2020 (see hyperlink below) is the most recent reference material that will provide additional information:

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf

PROJECT MANAGEMENT

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient close-outs of PA Program grants.

Record Keeping

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the "who, what, when, where, why, and how much" for each item of disaster recovery work. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;
- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

The Federal Office of Management and Budget requires grant recipients to maintain financial and program records on file for three years following final payment. Records of grant recipients may be subject to the provisions of the Single Audit Act, as described on page 117 of this guide. Applicants may refer to the Applicant Handbook, FEMA 323, for additional information regarding record-keeping.

ATTACHMENT "D"**MOBILIZATION SCHEDULE**

CONTRACTOR shall commence mobilization of equipment, operators, and laborers immediately upon receipt of a Mobilization Task Order to meet the progress pattern set below.

	Category 1 & 2	Category 3	Category 4	Category 5
Within 24 hours	25%	25%	20%	15%
Within 48 hours	30%	30%	30%	25%
Within 72 hours	40%	40%	40%	40%
Within 96 hours	60%	60%	50%	50%
Within 5 days	100%	80%	60%	60%
Within 10 days		100%	80%	70%
Within 14 days			100%	80%
Within 20 days				100%

ATTACHMENT "E"

FHWA-1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (Included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting 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.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (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 (1.) of this section, in the sum of \$10 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 (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT "F"

BUY AMERICA REQUIREMENTS

Source of Supply – Steel and Iron (Federal Aid Contracts Only): For Federal-aid contracts, the Contractor will only use steel and iron produced in the United States, in accordance with the buy America provisions of 23 CFR 635.410. Contractor will ensure that all manufacturing processes for these materials occur in the United States. A manufacturing process is any process that modifies the chemical content, physical shape, size or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (*e.g.*, concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the compensation or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. The Contractor shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the finished product was manufactured in the United States in accordance with the requirements of this provision. Such certification shall also include: (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced with the United States except for minimal quantities of foreign steel and iron and specify the actual value of the product. Each such certification shall be furnished to the AUTHORITY prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, Contractor shall furnish invoices to document the costs of such material, and obtain the AUTHORITY'S written approval prior to incorporating the material into the project.

ATTACHMENT "G"

PERFORMANCE AND PAYMENT BOND

BY THIS BOND, WE, _____, Inc., as Principal and _____ a Corporation, as Surety, are bound to the Solid Waste Authority of Palm Beach County, hereinafter referred to as "Authority", in the sum of _____ Dollars (up to \$10,000,000), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Agreement dated _____, 20____ between Principal and Authority for Proposal of Hurricane/Disaster Debris Removal, Reduction and Disposal, **Agreement No. 22-201**, the Agreement being made a part of this bond by reference, in the time and in the manner prescribed in the Agreement, and;
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials and supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement, and;
3. Pays Authority all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Authority sustains because of a default by Principal under the Agreement, and;
4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement, and;
5. At completion of all work covered by Agreement and Final Payment by Authority to Principal then Principal will replace this Performance and Payment Bond with a Proposal Bond, in the amount of 5% of this Performance and Payment Bond, to be held by the Authority as a guarantee that Principal will provide to the Authority a Performance and Payment Bond in the amount of up to \$10,000,000 on the occasion of a subsequent Task Order in accordance with the above referenced Agreement;

then this bond is void; otherwise it remains in full force.

Surety shall be responsible for any and all liquidated damages imposed by the Authority for the referenced Agreement.

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or the changes does not affect Surety's obligation under this bond. Any increase in the total Agreement amount as authorized by the Authority shall accordingly increase the Surety's obligation by the same dollar amount of said increase. CONTRACTOR shall be responsible for notification to Surety of all such changes.

See subsection (2) of Section 255.05, Florida Statutes as amended for the notice and time limitations for claimants.

Signed and sealed this ____ day of _____, 20__.

PRINCIPAL: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

1. _____
2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

NOTE:

Date of Bond must not be prior to date of Agreement. If CONTRACTOR is a Partnership, all partners must execute bond.

IMPORTANT:

Surety companies executing bonds **must** appear and remain on the Treasury Department's most current list (Circular 570 as amended) during construction, guarantee and warranty periods, and be authorized to transact business in the State of Florida, and be pre-approved by the Authority.



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGREEMENT FOR
DISASTER DEBRIS MANAGEMENT AND SUPPORT SERVICES

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

THOMPSON CONSULTING SERVICES, LLC

AGREEMENT NO. 22-202

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33412
(561) 640-4000**

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of APRIL 26th, 2022 (hereinafter referred to as the Agreement) by and between **Solid Waste Authority of Palm Beach County**, a special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and **THOMPSON CONSULTING SERVICES, LLC** (hereinafter referred to as CONSULTANT and when referred to collectively with AUTHORITY, the Parties), a Florida Corporation, whose Federal Employer ID Number is **45-2015453**;

Whereas, in accordance with the AUTHORITY's Request for Proposals No. 22-202/DL, solicited to employ the services of the CONSULTANT for the purpose of providing Disaster Debris Management and Support Services, and;

Whereas, CONSULTANT represents it is qualified, capable and prepared to provide such services.

Now, therefore, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is acknowledged by the other, the Parties hereto agree as follows:

ARTICLE 1 - EFFECTIVE DATE AND INCORPORATION OF RECITALS

- 1.1 The foregoing recitals are hereby incorporated herein by reference.
- 1.2 The Effective Date of this Agreement shall be **May 8, 2022**, and the Term of this Agreement shall expire on **May 7, 2025**.
- 1.3 The Initial Term of Agreement shall be for a three (3) year period, beginning on the Effective Date, unless otherwise terminated as provided herein. The AUTHORITY shall have the option of extending the Agreement for three (3) additional years, as approved by the AUTHORITY's Board, or designee, in its sole and unfettered discretion, on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both Parties.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform the services as specifically stated in the Scope of Work, attached hereto and made a part hereof as Exhibit "A", and/or as may be specifically designated and authorized by the AUTHORITY. Such authorizations will be referred to as Work Assignments. Each Work Assignment shall set forth the specific services required, the amount of compensation, and the completion date. In addition, the CONSULTANT may employ the use of sub-consultant(s) whose services are necessary to the CONSULTANT in the provision of services and upon specific approval for individual Work Assignments. In such case the sub-consultant, the specific services to be performed, and his/her compensation (including a not-to-exceed amount) shall be identified as part of the Work Assignment.

ARTICLE 3 - COMPENSATION

- 3.1 The AUTHORITY shall pay CONSULTANT in accordance with the Fee Schedule, attached hereto and made a part hereof as Exhibit "B". In addition, the Parties may negotiate a lump sum or not-to-exceed amount on a per-project basis on an individual Work Assignment.
- 3.2 All invoices must reference this Agreement along with the assigned purchase order number and the Work Assignment.
- 3.3 CONSULTANT shall submit a monthly invoice for services rendered. Invoices shall include a statement of progress made regarding the Work Assignment, a description of services rendered, and a breakdown of hours spent on the project. There shall be no reimbursable expenses allowable.

- 3.4 Payment of invoices shall be within thirty (30) days after receipt of a correct, fully documented invoice. All invoices shall be delivered to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attn: Accounts Payable

- 3.5 CONSULTANT will clearly mark its final/last billing with the words "Final Invoice". This will certify that all services have been fully performed under this Agreement and that all charges and costs have been invoiced to the AUTHORITY. Thereupon, this account will be closed and any additional charges or costs, not included in the Final Invoice, shall be waived by CONSULTANT. The AUTHORITY shall not be liable for the payment of any such additional charges or costs not included in the Final Invoice.

ARTICLE 4 - INSURANCE

- 4.1 During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies written by an insurance company authorized to do business in Florida and acceptable to the AUTHORITY.
1. **General Liability** Insurance with bodily injury limits of not less than \$2,000,000 for each occurrence, and with property damage limits of not less than \$2,000,000 for each occurrence.
 2. **Automobile Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits of not less than \$1,000,000 for each accident.
 3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$1,000,000 for each accident, \$1,000,000 for each disease, and \$1,000,000 aggregate.
 4. **Professional Liability** Insurance with limits of not less than \$1,000,000 annual aggregate.
- 4.2 Deductible amounts shall not exceed 5% of the total amount of required insurance in each category. Should any policy contain any unusual exclusions, said exclusions shall be so indicated on the certificate(s) of insurance.
- 4.3 CONSULTANT shall furnish AUTHORITY **Certificates of Insurance**, which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** after written notice has been given to the AUTHORITY. CONSULTANT shall include AUTHORITY as an **Additional Insured** on the General Liability and Automobile Liability insurance policy required by this Agreement. All of CONSULTANT'S sub-consultants shall be required to include AUTHORITY and CONSULTANT as **Additional Insured** on all of their liability insurance policies.
- 4.4 CONSULTANT shall ensure that CONSULTANT's naming of the AUTHORITY as an additional insured on its General Liability and Automobile Liability insurance policies pursuant to this Agreement shall afford coverage for the negligent, reckless, intentionally wrongful or willful acts of CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of this Agreement.
- 4.5 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the required insurance limits herein, CONSULTANT shall indemnify and hold harmless the AUTHORITY for any claim(s) in excess of the sub-consultants insurance coverage.
- 4.6 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

- 5.1 CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of any and all work performed pursuant to this Agreement as is ordinarily provided by comparable, qualified professionals under similar circumstances. The CONSULTANT shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.
- 5.2 The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONSULTANT agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

The CONSULTANT shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

6.3 SURVIVAL

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 - INDEPENDENT CONSULTANT

- 7.1 The CONSULTANT is, and shall be, in the performance of all work services and activities performed under this Agreement, an Independent Consultant, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT 'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Consultant and not as employees or agents of the AUTHORITY.
- 7.2 The CONSULTANT does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 8 - AUTHORITY TO CONDUCT BUSINESS

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all requirements in this Agreement.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

ARTICLE 10 - SUB-CONSULTANT

- 10.1 The AUTHORITY reserves the right, in its sole and unfettered discretion, to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant under this Agreement.
- 10.2 If a sub-consultant fails to perform or make progress, as required by this Agreement, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new sub-consultant by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

The AUTHORITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the AUTHORITY will provide an exemption certificate to CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the AUTHORITY, nor shall the CONSULTANT be authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the AUTHORITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of the Solid Waste Authority of Palm Beach County.

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONSULTANT, including; existing reports, studies, financial information, and other required data that are available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

- 14.1 The AUTHORITY may, by written notice of default to the CONSULTANT, terminate this Agreement in whole or in part if: a) the CONSULTANT fails to satisfactorily perform any provisions of this Agreement; b) or fails to make progress so as to endanger performance under the terms and conditions of this Agreement; c) repeatedly fails to perform; or d) does not remedy any such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONSULTANT, the AUTHORITY may, in its sole and unfettered discretion, procure goods and/or services similar to those required under this Agreement and the CONSULTANT shall be liable for any excess costs incurred due to this action.
- 14.2 If it is determined that the CONSULTANT was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of the CONSULTANT), the rights and obligations of the Parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

- 15.1 The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate this Agreement, in whole or in part, for the convenience of the AUTHORITY. The Director of Purchasing Services shall give five (5) days prior written Notice of Termination to the CONSULTANT, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONSULTANT has the right to withdraw, without adverse action by the AUTHORITY, from the entire Agreement.

- 15.2 Unless directed differently in the Notice of Termination, the CONSULTANT shall incur no further obligations in connection with the terminated work, and shall stop work to the extent specified on the date given in the Notice of Termination. Additionally, unless directed differently, the CONSULTANT shall terminate outstanding orders and/or subcontracts related to the terminated work.
- 15.3 Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination specified in the Notice of Termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

- 16.1 Neither the AUTHORITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 17 – JURISDICTION, VENUE, WAIVER OF JURY TRIAL AND REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located exclusively in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial failure by any party to exercise any right, power, or remedy hereunder, shall preclude that party from exercising that right, power or remedy in the future. **THE AUTHORITY AND CONSULTANT FREELY AND VOLUNTARILY AGREE TO WAIVE ITS RESPECTIVE RIGHT TO A JURY TRIAL ON ANY ISSUE(S) SO TRIABLE.**

ARTICLE 18 – COMMERCIAL NON-DISCRIMINATION POLICY

As a condition of entering into this Agreement, the CONSULTANT represents and warrants that it will comply with the AUTHORITY's Commercial Non-Discrimination Policy, as described in Section 6.3 of the AUTHORITY's Purchasing Manual, including subsequent amendments thereto, if any. As part of such compliance, the CONSULTANT shall not discriminate on the basis of race, color, religion, ancestry or national origin, gender, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONSULTANT retaliate against any person for reporting instances of such discrimination. The CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the AUTHORITY's relevant marketplace in Palm Beach County. The CONSULTANT understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the CONSULTANT from participating in AUTHORITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

The CONSULTANT agrees and understands that the provisions of Section 6.3 of the AUTHORITY's Purchasing Manual are incorporated herein by reference and that the CONSULTANT is familiar with the contents of same.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further or subsequent breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any further or subsequent default or breach.

ARTICLE 20 - SEVERABILITY

20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

20.2 The provisions of this section shall not prevent the entire Agreement from being void if a provision which is of the essence of the Agreement is determined to be void.

ARTICLE 21 - ENTIRETY OF AGREEMENT AND MODIFICATION

The AUTHORITY and the CONSULTANT agree that this Agreement, including Exhibits and Attachments, and any matters incorporated by specific reference sets forth the entire agreement between the Parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the AUTHORITY and CONSULTANT pertaining to the services, whether written or oral. None of the provisions or terms and conditions contained in this Agreement may be added to, amended, modified, superseded, or otherwise altered except by written instrument executed by the Parties thereto.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party and its partners, successors, executors, administrators, assigns and legal representatives. CONSULTANT shall not assign this Agreement without the prior express written approval of the AUTHORITY in its sole discretion via executed amendment.

ARTICLE 23 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - TRUTH-IN-NEGOTIATION CERTIFICATE

- 24.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of the Agreement.
- 24.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 25 - OWNERSHIP OF DOCUMENTS

CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the AUTHORITY for its use and/or distribution as may be deemed appropriate by the AUTHORITY in its sole and unfettered discretion.

ARTICLE 26 - PUBLIC RECORDS, ACCESS AND AUDITS

- 26.1 It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.

26.2 DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

RECORDS MANAGER

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

7501 NORTH JOG ROAD

WEST PALM BEACH, FL 33412

561-640-4000 EXT. 4606

RECORDSCUSTODIAN@SWA.ORG

- 26.3 The CONSULTANT shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>) after completion or termination of this Contract. Upon AUTHORITY'S request, CONSULTANT shall provide AUTHORITY with access to such records during normal business hours at a location within Palm Beach County for purposes of inspection or audit.
- 26.4 Notwithstanding anything herein to the contrary, the CONSULTANT expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Contract; ii) acting on behalf of the AUTHORITY in the performance of this Contract; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.

- 26.5 Any public records requests directed to, or related in any way to this contract shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager they shall immediately notify the CONSULTANT and the CONSULTANT must provide the records or allow access to the records within a reasonable time. A CONSULTANT who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.
- 26.6 Therefore, the CONSULTANT is required to:
- 1) Keep and maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
 - 2) Upon AUTHORITY's request from the AUTHORITY's Records Manager; provide the AUTHORITY with a copy of the requested records to allow the records to be inspected or copied within a reasonable time on the same terms and conditions that the AUTHORITY would provide the records at a cost that does not exceed the cost provided by Florida law;
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the CONSULTANT does not transfer the records to the AUTHORITY; and
 - 4) Upon completion of the Agreement, transfer at no cost to the AUTHORITY, all public records in possession of the CONSULTANT or keep and maintain public records to the AUTHORITY upon completion or termination of the Agreement; the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the AUTHORITY, upon request from the AUTHORITY's Records Manager, either during performance of the Agreement or after termination or completion of the Agreement in a format that is compatible with the information technology systems of the AUTHORITY.
- 26.7 Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Contract.
- 26.8 CONSULTANT shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency (FEMA) sub-grantee as required by 2 CFR 200.333. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.
- 26.9 In the event retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with State of Florida requirements.

ARTICLE 27 - INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This agreement

provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 28 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO AUTHORITY

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412

Attention: Executive Director
Office No.: 561-640-4000 Fax No.: 561-640-3400

AS TO CONSULTANT

Thompson Consulting Services, LLC
2601 Maitland Center Parkway
Maitland, Florida 32751

Attention: Nate Counsell, Executive Vice President
Office No.: 407-792-0018 Fax No.: 407-878-7858 E-Mail: ncounsell@thompsoncs.net

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e., printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and AUTHORITY.

ARTICLE 29 - CONTRACT ADMINISTRATION

Services of CONSULTANT shall be under the general direction of the **Chief Operations Officer**, or designee, who shall act as the AUTHORITY'S representative during the term of the Agreement.

ARTICLE 30 - KEY PERSONNEL

CONSULTANT shall notify AUTHORITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. AUTHORITY has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

Jon Hoyle – Principal-in-Charge
Cell No.: 321-303-2543 E-Mail: jhoyle@thompsoncs.net

Nathaniel Counsell – Principal-in-Charge
Cell No.: 407-619-2781 E-Mail: ncounsell@thompsoncs.net

Eric Harrison – Program/Project Manager
Cell No.: 407-312-1670 E-Mail: eharrison@thompsoncs.net

Corey Thomas – FEMA Public Assistance Liaison
Cell No.: 407-415-7602 E-Mail: cthomas@thompsoncs.net

Daniel Gardner – Data Manager
Cell No.: 407-617-1673 E-Mail: dgardner@thompsoncs.net

Wesley Holden – ADMS Deployment
Cell No.: 813-352-9942 E-Mail: wholden@thompsoncs.net

Nicole Lehman – Planning and Preparedness
Cell No.: 407-756-7589 E-Mail: nlehman@thompsoncs.net

Patrick Gardner – GIS/Environmental
Cell No.: 407-617-1614 E-Mail: pgardner@thompsoncs.net

ARTICLE 31 – EQUAL BUSINESS OPPORTUNITY PROGRAM:

The Governing Board of the AUTHORITY has implemented the Economic Inclusion Policy administered by the Equal Business Opportunity (EBO) Program Office to ensure that all segments of its business population, including, but not limited to local, small, minority, and women-owned businesses, have an equitable opportunity to participate in the AUTHORITY'S procurement process, in accordance with Section 6.1 through 6.4 of the Purchasing Manual, which is hereby incorporated herein. Program tools and solicitation incentives are hereby referred to as the Affirmative Procurement Initiatives (API).

31.1 Affirmative Procurement Initiative (API):

The AUTHORITY has not applied an Affirmative Procurement Initiative to this Agreement. However, pursuant to SWA Board Policy, the AUTHORITY encourages the use and participation of S/M/WBE's in the performance of AUTHORITY contracts and agreements. This is encouraged on a voluntary basis only for this solicitation, use is not required.

31.2 S/M/WBE Reporting:

The CONSULTANT is encouraged, but not required to use S/M/WBE's on a voluntary basis wherever possible. In this regard, the CONSULTANT is encouraged to report to the AUTHORITY's EBO Office all payments made to sub-contractors or sub-consultants and suppliers promptly at the close-out of the Project.

31.3 Prompt Payment:

Upon execution of this contract by CONSULTANT, CONSULTANT shall be required to submit to AUTHORITY accurate payment information with each invoice regarding each of its Sub-consultants, if any, to ensure that

the CONSULTANT's reported subcontract participation is accurate. CONSULTANT shall pay its Sub-consultants, if any, in compliance within timeframes set forth in accordance with the Florida Local Government Prompt Payment Act, or within ten (10) days of receipt of payment from the AUTHORITY, whichever is sooner.

ARTICLE 32 - SCRUTINIZED COMPANIES

- 32.1 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

- 32.2 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, this Agreement certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of renewal of this Agreement.

ARTICLE 33 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

- 33.1 The CONSULTANT agrees that this Agreement constitutes an offer to all State and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONSULTANT deem it in the best interest of their business to do so.

- 33.2 The Agreement in no way restricts or interferes with any State or local government agencies of the State of Florida from re-solicitation.

ARTICLE 34 – THIRD PARTY BENEFICIARY DISCLAIMER

It is not the intention of these documents to create third party beneficiary status in any person or entity that is not a direct party to this Agreement, and no language in this Agreement should be construed or interpreted as creating a third party beneficiary.

ARTICLE 35 – E-VERIFY – EMPLOYMENT ELIGIBILITY

- 35.1 The CONSULTANT certifies, warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended and that CONSULTANT shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the CONSULTANT'S subcontractors/subconsultants performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONSULTANT shall obtain from each of its subcontractors/subconsultants an affidavit stating that the subcontractor/subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. CONSULTANT shall maintain a copy of any such affidavit from a subcontractor/subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any

provision of this Agreement which requires a longer retention period.

- 35.2 AUTHORITY shall terminate this Agreement if it has a good faith belief that CONSULTANT has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If AUTHORITY has a good faith belief that one of CONSULTANT'S subcontractor/subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, AUTHORITY shall notify CONSULTANT to terminate its contract with the subcontractor/subconsultant and CONSULTANT shall immediately terminate its contract with the subconsultant. If AUTHORITY terminates this Agreement pursuant to the above, CONSULTANT shall be barred from being awarded a future contract by AUTHORITY for a period of one (1) year from the date on which the Agreement was terminated. In the event of such contract termination, CONSULTANT shall also be liable for any additional costs incurred by AUTHORITY as a result of the termination.

ARTICLE 36 – BUY AMERICA REQUIREMENTS

The CONSULTANT agrees to comply with the requirements of the Federal Buy America law (see 23 U.S.C. 313, ISTEA Sections 1041 (a) and 1048 (a), and FHWA's implementing regulations at 23 CFR 635.410, as they may be amended from time to time), as they related to Federal-aid contracts and the use of steel and iron produced in the United States. A description of the requirements of Buy America is set forth in **ATTACHMENT "A"**, which is attached hereto and incorporated by reference as part of this Agreement. CONSULTANT shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, FHWA, and FEMA to the extent applicable.

ARTICLE 37 – DISADVANTAGED BUSINESS ENTERPRISES

- 37.1 The Agreement is subject to the requirements of 49 CFR Part 26. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONSULTANT shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT – assisted contract. Failure by the CONSULTANT to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONSULTANT signs with a sub-consultant must include the assurance in this paragraph. (See 49 CFR 26.13). Upon request, the CONSULTANT will provide the AUTHORITY with a copy of each subcontract it enters into.
- 37.2 The CONSULTANT is required to pay its sub-consultants performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSULTANT's receipt of payment for that work from the AUTHORITY. The CONSULTANT may not hold any retainage from its sub-consultants unless pursuant to an agreement approved by the AUTHORITY. The CONSULTANT shall return all retainage payments withheld within thirty (30) days after the sub-consultant's work has been satisfactorily completed.
- 37.3 The CONSULTANT shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all sub-consultants indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONSULTANT shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting system located on the Florida Department of Transportation's (FDOT's) website found at www.fdot.gov/equalopportunity/dbesbepograms.shtml. Audits may be conducted to review payments to DBE sub-consultants. The CONSULTANT will fully cooperate with the AUTHORITY, FDOT, FHWA or FEMA regarding the monitoring of sub-consultants and payments made thereto.

ARTICLE 38 – CERTIFICATION REGARDING SUSPENSION, AND DEBARMENT

- 38.1 This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONSULTANT shall verify that neither the CONSULTANT, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.
- 38.2 The CONSULTANT agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONSULTANT must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. CONSULTANT's certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONSULTANT further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 39 – ACCESS TO RECORDS AND THEIR RETENTION

- 39.1 This provision shall supplement Article 26 of this Agreement. The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONSULTANT agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved.

The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.

- 39.2 The CONSULTANT shall make all of its books, records, and other documents related, in any manner to its or its sub-consultants' performance of the Agreement, available to the AUTHORITY and any other funding entity (e.g., FDOT, FEMA, the Comptroller General of the U.S. or any of their authorized representatives) for the purpose of examination, audit, reproduction, excerpts and transcripts, during normal business hours, at the CONSULTANT's place of business or if CONSULTANT's place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONSULTANT shall also require its sub-consultants to make their books, records, and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONSULTANT.

ARTICLE 40 – AUDIT REQUIREMENTS

This provision shall supplement Article 26 of the Agreement. The CONSULTANT agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONSULTANT agrees that it will comply, execute any necessary documents and fully cooperate with the AUTHORITY and any State and/or Federal funding agency(ies), including but not limited to FDOT, Florida's Auditor General, FEMA, or any of their authorized representatives, in any audit or monitoring procedures or processes any such entity(ies) may undertake related to CONSULTANT's performance of the Agreement in order to properly and satisfactorily complete the audit, if any.

ARTICLE 41 – NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONSULTANT shall cooperate with the AUTHORITY, FDOT, and FEMA so as to assure that all activities related to the performance of this Agreement comply with the requirements of the National NEPA of 1969, as amended, and the regulations and guidance related thereto.

ARTICLE 42 – AMERICANS WITH DISABILITIES ACT

The CONSULTANT does hereby represent and certify that it will comply with all of the requirements of the Americans with Disabilities Act of 1990 (42 USC 12102, *et seq.*) as it may be amended, and all applicable implementing regulations of the U.S. DOT, FEMA and other Federal-aid agencies.

ARTICLE 43 – COMPLIANCE WITH TITLE VI, TITLE VII, AND OTHER FEDERAL LAWS AND REGULATIONS

The CONSULTANT does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 USC 2000d, *et. seq.* and 3601 *et. seq.*) and the Age Discrimination and Employment Act of 1967 and Section 303 of the Age Discrimination Act of 1975, as amended (42 USC 6102), and all applicable Federal laws and regulations, policies, procedures, and directives of the U.S. DOT, FEMA, and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

ARTICLE 44 – CONVICT LABOR PROHIBITION

The CONSULTANT does hereby represent and certify that it will comply with the convict labor prohibition in 23 U.S.C. 114, and all implementing regulations thereto.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

In Witness Whereof, AUTHORITY, and CONSULTANT have made and executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

WITNESS:

1. [Signature]
2. [Signature]

By: [Signature]

Daniel Pellowitz
Executive Director

(SEAL)

APPROVED AS TO LEGAL SUFFICIENCY:

By: Howard J. Falcon III
Howard J. Falcon, III
General Counsel

Digitally signed by Howard J. Falcon III
DN: cn=Howard J. Falcon III, o=PB, ou=Enterprise, ou=CATT,
email=hfalcon@pbgov.org
Reason: I am the author of this document
Date: 2022.04.25 14:32:25-0400
File: PDF Editor Version: 11.2.1

APPROVED AS TO TERMS AND CONDITIONS:

[Signature]
Signature
Patrick D. Carroll
Print Name
COO
Title

ATTEST:

[Signature]
Corporate Secretary

THOMPSON CONSULTING SERVICES, LLC:

[Signature]
Authorized Signature
Jon Hoyle
Print Name
President

WITNESS:

1. [Signature]
2. Lydia Pena

04/19/2022
Title
Date

Approved by Authority Board on April 13, 2022, Item No.: 9.C.2

(Affix Corporate Seal)



SCOPE OF WORK

1. BACKGROUND INFORMATION:

- A. The AUTHORITY is seeking CONSULTANT to provide Disaster Debris Management and Support Services for the AUTHORITY. The CONSULTANT is expected to be extremely knowledgeable in Federal Emergency Management Agency (FEMA) and Federal Highway Administration (FHWA) regulations, guidelines, and operating policies. The CONSULTANT will support the AUTHORITY before, during and following a disaster recovery effort and will be responsible for the overall monitoring of debris collection. The CONSULTANT shall coordinate with the Disaster Debris Removal Contractor(s) and the AUTHORITY to ensure a compliant, well-managed and organized approach to debris collection and disposal within FEMA guidelines.
- B. The AUTHORITY will utilize an Automated Debris Management System (ADMS) and anticipates that the Disaster Debris Removal Contractor(s) will provide vehicle certification.
- C. The AUTHORITY will provide a Field Service Representative for each AUTHORITY'S Franchise Service Area (1-6) to oversee and monitor the collection activity within these service areas and to work directly with the Disaster Debris Removal Contractor(s) and the CONSULTANT to schedule all work. The AUTHORITY will provide Temporary Debris Management Sites (TDMS).
- D. The AUTHORITY currently has an Enterprise Geographic Information system (GIS) which utilizes ESRI's ArcGIS Server, ArcGIS Desktop Advanced, and Microsoft's SQL Server. Data is published to staff and the public using Rolta's Onpoint, which is a thin client for ESRI's ArcServer.
- E. The AUTHORITY'S Disaster Debris Removal Contractor(s) will provide the manpower and collection equipment in a timely manner to safely remove disaster debris as soon as possible. Additionally, the AUTHORITY'S Disaster Debris Removal Contractor(s) will open and operate Temporary Debris Management Site (TDMS) and immediately begin processing material on site and begin shipping material to final destination within ten (10) days of opening.
- F. The purpose of this RFP is to put in place an indefinite delivery/indefinite quantity Agreement for Disaster Management and Support Services based upon the specifications detailed herein. Task Orders will be issued pursuant to the Agreement, as necessary to complete work. What follows is a general description of the work anticipated.

2. SCOPE OF SERVICES:

- A. The scope of services to be provided pursuant to this RFP includes Project/Operations Management, Collection Monitoring, Automated Debris Management System (ADMS), Data Processing and Management, Temporary Debris Management Site (TDMS) Monitoring, Debris Vehicle Certification, Damage Complaint Tracking, Data Compilation and Reporting, Payment Monitoring and Reconciliation Processing, Reporting and Coordinating with the AUTHORITY'S Project/Operations Manager, and other related services as outlined in this section.
- B. PROPOSERS are advised to propose based on the entire scope of services as defined herein, however the AUTHORITY reserves the right to select which specific services the CONSULTANT will provide and to add or delete services throughout the term of any resulting Agreement with mutual consent.

2.1 Project/Operations Management

CONSULTANT will be responsible for Project/Operations Management of the debris monitoring activities for the AUTHORITY. This responsibility includes providing an experienced Project/Operations Manager, supplying a temporary field office for the monitoring staff, and coordinating and meeting with the AUTHORITY, field staff and contractors. Additionally, CONSULTANT will be responsible for hiring, training, deploying, scheduling and monitoring the activities of its collection monitors.

2.2 Collection Monitoring

- a. The CONSULTANT will be responsible for monitoring and certifying all AUTHORITY'S authorized collection activities. This responsibility includes monitoring and certifying all collection equipment, debris loads to ensure eligibility for federal reimbursement, providing trained collection monitors, exercising quality control over the debris monitoring activity, and providing daily feedback to the AUTHORITY. CONSULTANT shall ensure that all Disaster Debris Removal Contractor(s) loads are correctly captured by their ADMS.
- b. The CONSULTANT shall photographically document daily collection activities. CONSULTANT shall identify and document all leaners, hangers and stumps and coordinate with federal and state representatives to ensure eligibility and maximum reimbursement.
- c. Additionally, the CONSULTANT shall coordinate with the AUTHORITY to respond to problems in the field, such as property damage complaints, debris crew issues, other customer complaints, etc.
- d. CONSULTANT'S staff should be equipped with modern communication equipment. CONSULTANT shall have the ability to maintain shapefiles or geodatabases of collection passes, customer complaints and leaners, hangers and stumps including photos, and to track these issues using a GIS and provide an updated shapefile or geodatabase to the AUTHORITY on an appropriately determined schedule.

2.3 Automated Debris Management System (ADMS)

- a. Per FEMA policy document 327 Public Assistance Debris Monitoring Guide (https://www.fema.gov/pdf/government/grant/pa/fema_327_debris_monitoring.pdf), recent advances in automated debris management tracking systems provided real-time, automated tracking and reporting. FEMA embraces technological advancements and recognizes the potential benefits of these automated systems.
- b. The CONSULTANT shall provide an electronic automated debris management system that shall create load tickets electronically, eliminating the need for written and scanned tickets. The ADMS features shall include, at a minimum, the following:
 1. Paperless electronic (handheld device) load ticket generation and data collection;
 2. Debris vehicle certification data capture at certification site;
 3. Encrypted and secure field data transfer (field to TDMS, TDMS to server);
 4. Accessible secure database for government and Disaster Debris Removal Contractor(s) use. Database will be internet accessible by Disaster Debris Removal Contractor(s), AUTHORITY, State and other public entities on a need to know basis;
 5. Minimal manual entry of load ticket data fields (e.g., load call, type of debris, automated system capable to input possible municipal paper tickets or different ADMS systems);

EXHIBIT "A"

6. Automation of debris pickup location thru use of Global Positioning System (GPS) technologies;
 7. Evaluation of daily event status using web-based reporting and GIS tools;
 8. Coordination of Disaster Debris Removal Contractor(s) invoices, FEMA documentation and applicant payment process enabled thru an integrated database management system;
 9. CONSULTANT shall use an ADMS during the performance of services under this agreement for managing the collection, transport, and/or disposal of debris.
- c. The AUTHORITY has Interlocal Agreements for Disaster Debris Management with municipalities to deliver eligible storm debris to AUTHORITY'S TDMS. These municipalities may choose to use the current AUTHORITY'S paper load ticket system or contract with another ADMS company.
- d. The municipalities must submit a legible and complete paper load ticket at the AUTHORITY'S TDMS with each load. The AUTHORITY will provide the truck certification, placard, and load tickets for these municipalities. CONSULTANT will be responsible to enter paper load ticket(s) and ADMS data from a different ADMS company contracted for debris load monitoring service by a municipality delivering eligible debris to an approved AUTHORITY TDMS.

2.4 Temporary Debris Management Site (TDMS) Monitoring

The CONSULTANT will provide TDMS monitors and spotters to observe and document the unloading, processing and loading of debris in strict accordance with FEMA requirements and the AUTHORITY'S Debris Management Plan. This responsibility includes estimating the load volume, completing the ADMS load tickets and signing and certifying that the information is complete and accurate. Additional responsibilities include conducting pre-use and post-use environmental monitoring, ensuring that the truck certifications are accurate, ensuring that all collection vehicles are equipped with the necessary safety restraints, coordinating with all federal, state and local agencies, and keeping accurate records.

2.5 Debris Vehicle Certification

The CONSULTANT will be responsible for measuring and capturing data elements for each Disaster Debris Removal Contractor(s) vehicle in strict accordance with FEMA requirements utilizing their ADMS. Additionally, CONSULTANT will take a photograph of each vehicle showing the vehicle number and type of vehicle. CONSULTANT will also perform random verifications once per week at each TDMS to ensure that no vehicle modifications have been made.

2.6 Damage Complaint Tracking

The CONSULTANT shall assist the AUTHORITY with tracking, managing, reporting and customer follow-up through to resolution of all damage complaints resulting from debris removal activities. The AUTHORITY requires the complaints to be tracked using a GIS including linked photos.

2.7 Data Compilation and Reporting

- a. The CONSULTANT will be responsible for collecting, auditing for completeness and accuracy, tabulating and organizing debris disposal data and vehicle certifications, project records, photos and manifests, etc., to support federal (FEMA), state and local reimbursements, and subsequent audits.

EXHIBIT "A"

- b. The CONSULTANT will be responsible for providing regular status updates to the AUTHORITY. This reporting will include creating, updating and maintaining a database to include all information on debris removal and disposal, including number of loads and types, vehicle certification, stump, hanger and leaner information and images. All electronic reporting will be provided in a format acceptable to the AUTHORITY and the AUTHORITY shall have access to the database to perform queries and produce reports. The AUTHORITY will require the CONSULTANT to meet minimum standards for the timeliness of data reporting pursuant to this Section 2.2.

2.8 Payment Monitoring and Reconciliation Processing

The CONSULTANT will be responsible for reviewing, validating and reconciling Disaster Debris Removal Contractor(s) invoices prior to submission to the AUTHORITY for processing and approval.

2.9 Other Related Services

Additional services the AUTHORITY requires the CONSULTANT to provide include the following:

- a. Assistance the AUTHORITY in preparing final reports for reimbursement by FEMA, FHWA and other agencies;
- b. Providing professional oversight to ensure compliance with Florida Department of Environmental Protection (FDEP), Florida Department of Transportation (FDOT), Florida Department of Forestry (DOF), and FEMA regulatory and reporting requirements, as well as any other federal, state, or local regulation applicable to debris management;
- c. Ensuring that the processing of federal funding is done as expeditiously as possible by taking ownership of the responsibility for ensuring the accuracy of invoices, payroll, monitoring information, reports, ADMS data, vehicle certifications, and operating data;
- d. Meeting with AUTHORITY'S representatives and the Disaster Debris Removal Contractor(s) daily during disaster event activation. Meeting with the AUTHORITY'S Project Manager or his/her designee at least once per year at no cost to the AUTHORITY prior to hurricane season, and;
- e. Additional services that the PROPOSER wishes to propose or that the AUTHORITY and the CONSULTANT agree to add at a later date.

FEE SCHEDULE

PROPOSAL FORM 2 – PRICE PROPOSAL

PROPOSER shall provide a completed Proposal Form 2 – Price Proposal and provide a price on every item to be considered in the evaluation of his/her submittal. The Estimated Annual Hours and Total Proposal Price provided below will be used for proposal evaluation purposes only and does not reflect the scope of services for any post-disaster work. However, the Unit Price Per Hour will be a part of the Agreement.

PROPOSED FEES (based on estimated 3 million cubic yards)			
ITEM NO / POSITION DESCRIPTION	ESTIMATED ANNUAL HOURS	UNIT PRICE PER HOUR	EXTENSION
1. Project Office/Principal	200	\$ 89.00	\$ 17,800.00
2. Project Manager	700	\$ 85.00	\$ 59,500.00
3. Operations Manager	1,900	\$ 60.00	\$ 114,000.00
4. FEMA Reimbursement Manager	500	\$ 95.00	\$ 47,500.00
5. Operations Specialist	700	\$ 49.00	\$ 34,300.00
6. Field Supervisor	8,000	\$ 49.00	\$ 392,000.00
7. Engineer/Scientist/Professional	400	\$ 80.00	\$ 32,000.00
8. Environmental Consultant	700	\$ 70.00	\$ 49,000.00
9. Environmental Field Technician	700	\$ 50.00	\$ 35,000.00
10. Data Manager	700	\$ 50.00	\$ 35,000.00
11. GIS Analyst/Specialist	200	\$ 49.00	\$ 9,800.00
12. Administrative Support	1,200	\$ 25.00	\$ 30,000.00
13. TDMS Monitor	22,000	\$ 36.00	\$ 792,000.00
14. Field Monitor	43,000	\$ 36.00	\$ 1,548,000.00
15. Call Center Operator	4,300	\$ 22.00	\$ 94,600.00
TOTAL PROPOSAL PRICE (Items 1 - 15):			\$ 3,290,500.00

Proposed fees shall be fully loaded and include all expenses and equipment, including but not limited to, ADMS, travel related expenses, meal allowances, hotel rooms, and any other relevant out of pocket expenses, as well as vehicles, electronics, communications equipment and any other equipment, facilities, or infrastructure necessary to carry out the task.

ATTACHMENT "A"

BUY AMERICA REQUIREMENTS

Source of Supply – Steel and Iron (Federal Aid Contracts Only): For Federal-aid contracts, the CONSULTANT will only use steel and iron produced in the United States, in accordance with the buy America provisions of 23 CFR 635.410. CONSULTANT will ensure that all manufacturing processes for these materials occur in the United States. A manufacturing process is any process that modifies the chemical content, physical shape, size or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the compensation or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the CONSULTANT uses but does not incorporate into the finished work. The CONSULTANT shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the finished product was manufactured in the United States in accordance with the requirements of this provision. Such certification shall also include: (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced with the United States except for minimal quantities of foreign steel and iron and specify the actual value of the product. Each such certification shall be furnished to the AUTHORITY prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, CONSULTANT shall furnish invoices to document the costs of such material, and obtain the AUTHORITY's written approval prior to incorporating the material into the project.

Date: April 27, 2022
To: Honorable Mayor and Commissioners
From: Durrani Guy, Building Official
Re: Building Permit Extension Request for 6990 N Ocean Blvd

Mayor and Commissioners,

The above referenced project is to be performed at the Ocean Inlet Park facilities on property owned by Palm Beach County.

Application for this project was submitted on 10/19/2020 and permits issued on 11/09/2020. The Commission approved a six-month extension on 11/5/2020 which is set to expire on April 29, 2022. Based on our ordinance, Sec. 67-52, Commencement and duration of construction, this permit will require Commission approval in order to be extended. This project is active and ongoing.

Please see the letter from Rich Avery with Palm Beach County for more information about their request.

Sec. 67-52. - Commencement and duration of construction.

Construction shall commence within six months from the date of issuance of a building permit. If construction has not commenced within six months, the building permit shall expire. Following commencement of construction pursuant to a building permit, all construction shall be completed within two years for single family residential estates, or one year for all other buildings or structures, unless extended for no more than one, six-month period by the administrative official, upon a showing of good cause. Subsequent to the granting of one administrative extension, any additional extensions may be granted by the town commission upon a showing of good cause. If construction is not completed within the timeframes prescribed in this Code, a financial penalty equal to the cost of the original building permit fee shall be imposed.

Suggested Motion: I move to approve the request for building permit extension for 6990 N Ocean Blvd for a period of 6 months and to waive permit renewal fees.



**Facilities Development &
Operations Department
Capital Improvements Division**

2633 Vista Parkway
West Palm Beach, FL 33411-5604
(561) 233-0261
www.pbcgov.com/fdo



**Palm Beach County
Board of County
Commissioners**

Robert S. Weinroth, Mayor

Gregg K. Weiss, Vice Mayor

Maria G. Marino

Dave Kerner

Maria Sachs

Melissa McKinlay

Mack Bernard

County Administrator

Verdenia C. Baker

April 27, 2022

Town of Ocean Ridge
Lisa Burns, Building Clerk
6450 North Ocean Boulevard
Ocean Ridge, FL, 33435

**Subject: Time Extension Request - Permit Number 20377
Ocean Inlet Park
Project # 13367**

Ms. Burns:

Please accept this letter as a formal request for a six (6) month time extension for the permit No. 20377 pursuant to the Code of Ordinances Sec. 67-31 and 67-30 of the Town's Code of Ordinances

The building permit application No. 20377 was approved on November 5, 2020 for the replacement of the existing marina bulkhead walls, fixed docks & associated facilities and the addition of a day use floating docks & gangway. The project is ongoing. However, the building permit is set to expire on April 29, 2022.

Palm Beach County, Facilities Development & Operations is respectfully requesting a six (6) month time extension to allow construction to continue.

Should you have any questions or require any additional information, please contact me at 233-0208 at your convenience.

Sincerely,

Rich Avery, Project Manager
Facilities Development and Operations

cc: Simon Coleman, Ph.D., P.E, Project Manager
File: 13367

*"An Equal Opportunity
Affirmative Action Employer"*



printed on sustainable
and recycled paper

Date: April 27, 2022
To: Honorable Mayor and Commissioners
From: Durrani Guy, Building Official
Re: Building Permit Extension Request for 24 Hudson Avenue

Mayor and Commissioners,

The contractor for 24 Hudson Avenue has requested a building permit time extension in accordance with the Town Code Section 67-52, for their building permit to construct a single-family home. The contractor is also requesting the waiver of permit renewal fees in the amount of \$6,714.50. The permit was originally issued on May 6, 2020 and has expired on May 21, 2021. They currently have a temporary certificate of occupancy application in review and scheduled a final drainage inspection for Tuesday, May 3, 2022. I have attached the contractor's request for your review and consideration.

Sec. 67-52. - Commencement and duration of construction.

Construction shall commence within six months from the date of issuance of a building permit. If construction has not commenced within six months, the building permit shall expire. Following commencement of construction pursuant to a building permit, all construction shall be completed within two years for single family residential estates, or one year for all other buildings or structures, unless extended for no more than one, six-month period by the administrative official, upon a showing of good cause. Subsequent to the granting of one administrative extension, any additional extensions may be granted by the town commission upon a showing of good cause. If construction is not completed within the timeframes prescribed in this Code, a financial penalty equal to the cost of the original building permit fee shall be imposed.

Suggested Motion: I move to approve the request for building permit extension for 24 Hudson Avenue for a period of 6 months and to waive permit renewal fees.

From: [Tyler Romanowski](#)
To: [Lisa A. Burns](#); [Steve Romanowski](#)
Subject: RE: 24 Hudson Avenue
Date: Wednesday, April 27, 2022 1:23:00 PM
Attachments: [image001.png](#)

Hi Lisa,

We would like to request an extension of permit number 19-587 without fee. There have been lots of unexpected delays in the last year with Covid and all of the material shortages. We have received our final pieces of paperwork for CO which have all been turned in and expect to have all inspections done by end of next week 5-6-22.

Thank you,

Tyler Romanowski
Vintage Building & Design
200 Lindell Blvd. #919
Delray Beach, FL 33483
(P) 561-271-0586

From: Lisa A. Burns [mailto:lburns@oceanridgeflorida.com]
Sent: Wednesday, April 27, 2022 10:26 AM
To: Tyler Romanowski <tyler@vintagebd.net>; Steve Romanowski <steve@vintagebd.net>
Subject: 24 Hudson Avenue

In regards to the expiration of permit 19587 for 24 Hudson Avenue and the TCO expiration date:

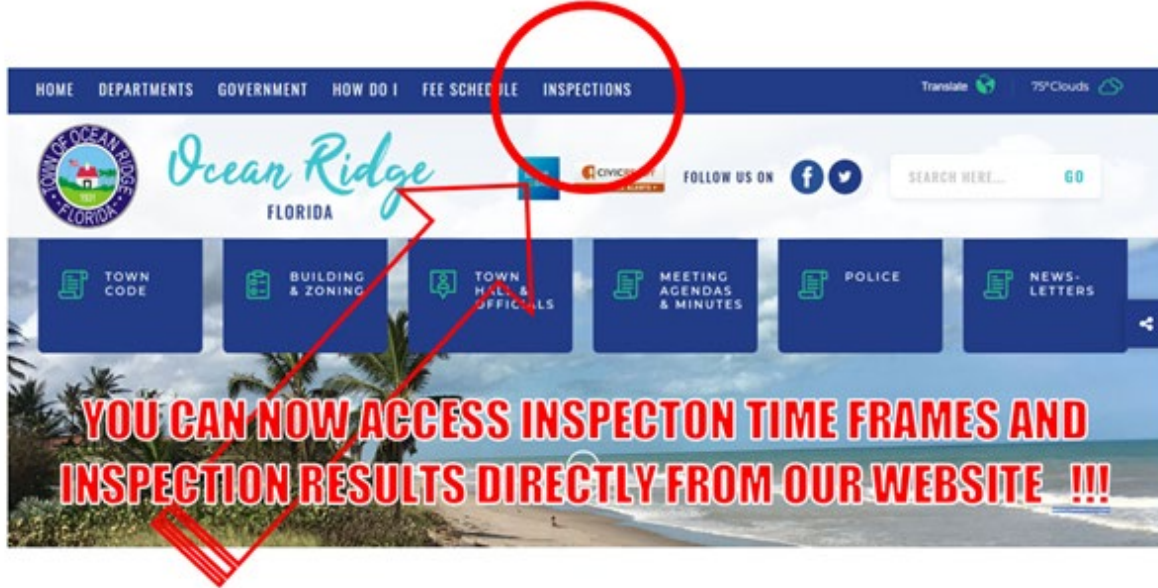
The expiration of the TCO ended April 22, 2022. If you'd like to request another extension, please complete the attached form and submit the Building Dept. as soon as possible.

Since this permit expired per Town Code after one year, you may request an extension from the Town Commission. We would like to add this request to May's meeting. Please submit a letter stating the reason or the extension request and, you have an option to add to the request that a waiver of the renewal fees. You may send this request to me via email today. Thank you!

Sincerely,
Lisa Burns
Building Clerk
lburns@oceanridgeflorida.com
Town of Ocean Ridge
6450 N. Ocean Blvd.
Ocean Ridge, FL 33435
561-732-2635 (Town Hall)
561-737-8359 (Fax)
561-738-ORFL (Citizen Information Line)

@OceanRidgeFL (Facebook & Twitter)

Office Hours Monday – Friday 8:30am-3pm (excluding federal holidays)



PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the Town of Ocean Ridge officials and employees regarding public business are public records available to the public and media upon request. Your e-mail communications may be subject to public disclosure. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. The views expressed in this message may not necessarily reflect those of the Town of Ocean Ridge. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Town Clerk, Karla Armstrong

Meeting Date: June 6, 2022
Subject: Refund for the DiMaria's at 33 Hersey Drive

Mayor & Commissioners:

Mr. & Mrs. DiMaria wanted to construct a dune crossover on a portion of their lot which is located to the east of Old Ocean Boulevard, separated from the single-family home which fronts on Hersey Drive, and which was proposed seaward of the coastal construction control line. At the time, Section 67-18 of the Town Code stated that no construction of any structure whatsoever was permitted seaward of the 1979 coastal construction control line, and that the criteria and standards set forth in Section 63-73(3), Variances, shall govern the granting of any variance under this section.

The DiMaria's purchased the property on June 5, 2020, with the expectation of building a dune crossover on the portion of the lot east of Old Ocean Boulevard, similar to other dune crossover structures which exist on other properties in Ocean Ridge. However, with the adoption of Ordinance 2020-05 on September 8, 2020, a variance was required for any construction seaward of the coastal construction line including a dune crossover.

Mr. & Mrs. DiMaria were granted the variance to build the dune crossover at the Board of Adjustment Hearing on February 17, 2021. Subsequently, the Town Commission changed Sec. 64-41 in the Code through Ordinance 2021-03. Section 64-41 created an exception from the variance requirement for dune crossovers (inclusive of the deck, walkway, and steps). The DiMaria's were the only applicants that went before the Board of Adjustment for a variance for a dune crossover.

Mrs. DiMaria has requested that the variance fee be refunded to her because the Code was later changed to allow for a dune crossover without a variance. The fee for the variance was \$1,500, and she paid the fee on December 23, 2020.

Respectfully,

Karla Armstrong
Town Clerk

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Town Manager

Meeting Date: June 6, 2022
Subject: Contract to Provide Police Services to the Town of Briny Breezes

Mayor & Commissioners:

As you know, the Town of Ocean Ridge was successful in submitting a proposal to the Town of Briny Breezes through their RFP process and were awarded the police services contract at the August 22, 2019 Briny Breezes Town Council meeting for a term of three years. The current contract will expire on September 30, 2022, and the Briny Breezes Town Council recently voted to extend the contract for an additional three years.

Staff recommends that the Town Commission approve the first amendment to the contract as submitted and authorize the Mayor to sign the agreement on behalf of the Town.

Respectfully,



Tracey L. Stevens, MMC
Town Manager & Finance Director

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT
FOR LAW ENFORCEMENT SERVICES**

THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT FOR LAW ENFORCEMENT SERVICES ("Amendment") is entered on the ____ day of _____, 2022, by and between the **Town of Ocean Ridge**, a Florida municipal corporation ("Ocean Ridge"), and the **Town of Briny Breezes**, a Florida municipal corporation ("Briny Breezes"), which Towns are adjoining municipal corporations located within the territorial boundaries of Palm Beach County, Florida.

RECITALS

WHEREAS, on October 1, 2019, Ocean Ridge and Briny Breezes entered the Interlocal Agreement for Law Enforcement Services pursuant to the authority set forth in section 163.01 and 166.0495, Florida Statutes, for Ocean Ridge to provide professional law enforcement services to Briny Breezes (the "Agreement"); and,

WHEREAS, the Agreement had an initial term of three (3) years (expiring September 30, 2022) with the ability to further extend the term upon the agreement of the parties; and,

WHEREAS, Ocean Ridge and Briny Breezes desire to amend the Agreement to extend the term for another three (3) years and to revise the compensation paid to Ocean Ridge consistent with Ocean Ridge's 2019 price proposal to Briny Breezes; and,

WHEREAS, Ocean Ridge and Briny Breezes have concluded that amending the Agreement as set forth herein is in the best interest of both Towns and serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, Ocean Ridge and Briny Breezes agree to amend the Agreement as follows:

SECTION 1: Incorporation of Recitals. The foregoing Recitals are incorporated into this Amendment as true and correct statements.

SECTION 2: Amendment to Term. The term of the Agreement as set forth in Section 4 of the Agreement is amended by extending the term to renew and commence on October 1, 2022 at 12:01 A.M., and terminate on September 30, 2025 at midnight. The Agreement may be extended for an additional term or terms based on the agreement of the parties.

SECTION 3: Amendment to Amount and Method of Payment. The amount of payment set forth in Section 5 of the Agreement is amended as follows:

- A. In consideration of Ocean Ridge providing the professional law enforcement services provided herein, Briny Breezes agrees to pay Ocean Ridge compensation in the sum of One Hundred Ninety-Six Thousand, Six Hundred Ninety-One Dollars (\$196,691.00) for Year 4 of this Agreement.
- B. Annually on October 1st, the compensation paid by Briny Breezes shall increase three percent (3%) per year (for Years 5 and 6) to accommodate growth in Police Department personnel, equipment, investment, and level of service assigned. For avoidance of doubt, in Year 5 of this Agreement, Briny Breezes shall pay Ocean Ridge compensation in the sum of Two Hundred

Two Thousand, Five Hundred Ninety-One Dollars (\$202,591.00) and, in Year 6 of this Agreement, Briny Breezes shall pay Ocean Ridge compensation in the sum of Two Hundred Eight Thousand, Six Hundred Sixty-Eight Dollars (\$208,668.00).

- C. Briny Breezes shall pay such compensation to Ocean Ridge in twelve equal installments, to be paid consecutively on the first day of each month throughout the term of this Agreement.

SECTION 4: Entire Agreement. Ocean Ridge and Briny Breezes agree that the Agreement and this Amendment set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Amendment may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. All other terms and conditions of the Agreement (except as amended herein) remain in full force and effect.

SECTION 5. Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either or both parties may sign this Amendment via facsimile, email or electronically and such signature is as valid as the original signature of such party.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to the Interlocal Agreement for Law Enforcement Services to be executed as of the day and year set forth above.

ATTEST:

TOWN OF OCEAN RIDGE

By: _____
Karla Armstrong, Town Clerk

By: _____
Susan Hurlburt, Mayor

Approved as to form and legal sufficiency:

Christy L. Goddeau, Town Attorney

TOWN OF BRINY BREEZES

ATTEST:

By: _____
Sandi DuBose, Town Clerk

By: _____
Gene Adams, Mayor

Approved as to form and legal sufficiency:

Keith Davis, Town Attorney

**CONTRACT FOR THE PROVISION OF
POLICE SERVICES BETWEEN
THE TOWN OF OCEAN RIDGE, FLORIDA AND
THE TOWN OF BRINY BREEZES, FLORIDA**

INTERLOCAL AGREEMENT FOR LAW ENFORCEMENT SERVICES

This Interlocal Agreement, is made and entered into this First Day of October, 2019, by and between the Town of Ocean Ridge, a municipal corporation of the State of Florida, hereinafter called "Ocean Ridge", and the Town of Briny Breezes, a municipal corporation of the State of Florida, hereinafter called "Briny Breezes", which Towns are adjoining municipal corporations located within the territorial boundaries of the County of Palm Beach, Florida.

WITNESSETH:

WHEREAS, Section 163.01 and 166.0495, Florida Statutes, authorize a municipality to enter into an interlocal agreement with an adjoining municipality in the same county to provide law enforcement services, conduct law enforcement activities, and provide police protection services, hereinafter called "Professional Law Enforcement Services", within the territorial boundaries of the other adjoining municipality; and

WHEREAS, Briny Breezes is in need of professional law enforcement services within its territorial boundaries for the safety, protection and general well-being of its citizens, residents, property owners, and the members of the public; and,

WHEREAS, Briny Breezes has requested an Interlocal Agreement be entered between it and Ocean Ridge pursuant to Section 163.01 and 166.0495, Florida Statutes, by which Ocean Ridge shall and will provide it with the professional law enforcement services that Briny Breezes requires within its territorial boundaries by and through the Ocean Ridge Police Department; and,

WHEREAS, Ocean Ridge is willing to enter into such an Interlocal Agreement with Briny Breezes for the purposes aforesaid upon and for a fair consideration.

NOW THEREFORE, for and in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for other good and valuable considerations, the parties agree as follows:

Section 1. Recitals Adopted.

The above recitals are true and correct and are adopted herein as legislative findings of fact.

Section 2. Services Personnel and Equipment.

Ocean Ridge agrees to provide professional law enforcement services within the territorial boundaries of the municipality of Briny Breezes in substantially the same manner and form as that provided by Ocean Ridge for its own citizens.

Section 3. Inspection and Approval.

Briny Breezes acknowledges that it has inspected the Ocean Ridge Police Department, has informed itself as to the number of sworn law enforcement officers and police personnel employed, the amount and quality of equipment and physical resources available for police protection and law enforcement activities, and the available scope and capabilities of such police facilities, and does hereby approve and accept these personnel, services and facilities as being adequate, reasonable, and capable for the purpose of providing professional law enforcement services within the territorial boundaries of the Town of Briny Breezes.

Section 4. Term of Contract.

The term of this agreement shall be for a period of three (3) years, commencing on October 1, 2019, at 12:01 A.M., and terminating on September 30, 2022, at midnight. This Agreement can be extended for an additional term or terms based on agreement between the parties.

Section 5. Amount and Method of Payment.

- A. In consideration of Ocean Ridge providing the professional law enforcement services provided herein, Briny Breezes agrees to pay Ocean Ridge compensation in the sum of One Hundred Eighty Thousand Dollars (\$180,000.00) for year one of this Agreement.
- B. Annually on October 1st, the compensation paid by Briny Breezes on this contract shall increase 3% per year (years 2 and 3) to accommodate growth in Police Department personnel, equipment investment and level of service assigned.
- C. Briny Breezes shall pay such compensation to Ocean Ridge in twelve equal installments, to be paid consecutively on the first day of each month throughout the term of this agreement.

Section 6. Termination.

In the event that the Town of Briny Breezes should cease to be a municipal corporation of the State of Florida by reason of its dissolution or abolishment, or by its merger or consolidation with the County of Palm Beach or with another municipal corporation within said county, then in such event this agreement shall thereupon terminate and cease to be in effect. Any indebtedness payable hereunder by the Town of Briny Breezes to the Town of Ocean Ridge for services provided pursuant to the terms hereof shall be equitable prorated for services rendered up to and including the date of said termination. However, the Town of Briny Breezes may terminate this agreement without cause upon providing written notice to the Town of Ocean Ridge at least six (6) months prior to the effective date of the termination.

Section 7. Lawful Authority.

By entering into this agreement, Briny Breezes delegates law enforcement powers and authority to the Ocean Ridge Police Department and its officers within the territorial boundaries of the Town of Briny Breezes.

Section 8. Exclusive Authority.

In rendering services hereunder in and for the Town of Briny Breezes, the Chief of Police of Ocean Ridge shall have full, complete, and exclusive authority over the use and operations of the personnel, vehicles, and equipment of the Ocean Ridge Police Department. Said Police Chief shall have full discretion to employ accepted techniques, methods, and procedures in performing law enforcement services, conducting law enforcement activities and providing professional law enforcement services within the territorial boundaries of the Town of Briny Breezes as he deems necessary.

Section 9. Public Obedience.

The officials, citizens, residents, and property owners of Briny Breezes shall at all times obey the lawful commands of the Chief of Police, the Police Officers, and the personnel of the Town of Ocean Ridge Police Department in the direction, management and deployment of its resources hereunder, and shall not interfere with them in the performance of their official duties hereunder.

Section 10. Personnel Complaints.

All suggestions, recommendations, and complaints concerning the services provided hereunder shall be directed to the attention of the Chief of the Ocean Ridge Police Department in writing for proper administrative remedy and/or response.

Section 11. Official Appointment.

Pursuant to the Charter and Ordinances of Briny Breezes, the Chief of Police of Ocean Ridge is hereby appointed as, and declared to be, the Town Marshal of Briny Breezes. In addition, all other sworn law enforcement officers of the Ocean Ridge Police Department are hereby appointed as, and declared to be, Deputy Town Marshals of Briny Breezes. Prior to commencement of their duties hereunder, all such appointees and designees shall take an oath of office as sworn law officers for the Town of Briny Breezes. The Town Clerk is hereby authorized and directed to administer such oath of office to the Chief of Police of Ocean Ridge, and the Chief of Police shall administer the oath of office to his law enforcement officers.

Section 12. Procedure for Simultaneous Public Safety Problems.

The parties agree that if the Police Department of the Town of Ocean Ridge receives simultaneous calls for its services for separate incidents or other public safety problems in both Ocean Ridge and Briny Breezes, the judgment of the Chief of the Ocean Ridge Police Department, or his senior officer on duty at the time, as to which call should receive first priority response shall be binding upon the parties hereto and shall control their actions.

Section 13. Ocean Ridge's Insurance.

In rendering services hereunder to Briny Breezes, Ocean Ridge shall carry all necessary and required policies of insurance in amounts of coverage sufficient to protect its personnel in the event of death or injury and its equipment in the event

of damage or destruction, and shall provide its employees with Workers' Compensation Insurance, and Law Enforcement Officers Death Benefit Insurance. Ocean Ridge shall also carry all risk liability insurance continually during the term of this Agreement in an amount acceptable to Briny Breezes. Briny Breezes shall be named as an additional insured on all said policies which must provide for 30-days' notice to Briny Breezes prior to cancellation.

Section 14. Briny Breezes' Insurance.

Briny Breezes shall carry all risk liability insurance continually during the term of this Agreement in an amount acceptable to Ocean Ridge. Ocean Ridge shall be named as an additional insured on said policy, which must provide for 30-days' notice to Ocean Ridge prior to cancellation.

Section 15. Quality of Service.

Ocean Ridge agrees to provide Briny Breezes with a professional level of police protection to the same extent as that which is customarily provided in Palm Beach County by a Town comparable in size to Ocean Ridge. This shall include the following:

- a. Provide routine and enhanced alternative directed patrol with the same regularity as in Ocean Ridge
- b. Respond to calls for service
- c. Check security of common buildings (nighttime)
- d. Investigate crimes occurring in the Town of Briny Breezes
- e. First responder response and treatment of injured residents
- f. Provide information and activity reports to Briny Breezes Town Manager's Office
- g. Provide speakers on Crime Prevention and Safety upon request
- h. Provide for the hiring of extra duty personnel as available and contracted

Section 16. Notice to the Parties.

Any notices required or contemplated under this Agreement shall be in writing and be sent to the Mayor and Town Manager of Briny Breezes at 4802 North Ocean Boulevard, Briny Breezes, Florida 33435; and to the Mayor and Town Manager of Ocean Ridge at 6450 North Ocean Boulevard, Ocean Ridge, Florida 33435.

Section 17. Construction of Words and Terms.

Wherever herein the context so requires, the use of the singular shall include the plural and vice versa, the use of the masculine shall include the feminine and neuter vice versa, and the use of "officials" shall include all appointed and elected officials of Ocean Ridge and Briny Breezes, and their successors and assigns.

Section 18. Integration.

This instrument embodies the whole agreement of the parties-on the subject matter contained herein and there are no promises, terms, conditions, or obligations other than those herein contained. This Agreement shall supersede

all previous communications, representations, offers, advertisements, brochures, proposals, or agreements regarding the subject matter contained herein, either oral or written, between the parties hereto and not herein contained.

Section 19. Severability.

In the event that any part, term or provision of this Agreement is found to be illegal or inoperative by a court of competent jurisdiction, the validity of the remaining proportions and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision so held to be invalid.

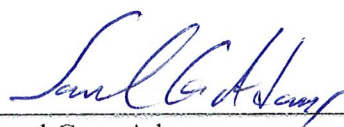
Section 20. Captions.

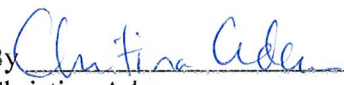
Captions are included for convenience only and shall be given no legal effect whatsoever.

Section 21. No Waiver of Sovereign Immunity. Nothing in this agreement shall be construed as a waiver of sovereign immunity of the Town of Ocean Ridge or the Town of Briny Breezes pursuant to Section 768.28, Florida Statutes. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the Town of Ocean Ridge shall indemnify and hold harmless the Town of Briny Breezes against any actions, claims or damages arising out of the Town of Ocean Ridge's negligence in connection with this agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes section 768.28 nor shall the same be construed to constitute agreement by either party to indemnify the other for such other party's negligent, willful or intentional acts or omissions.

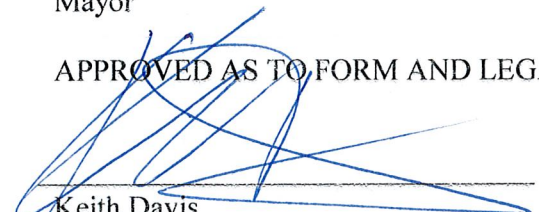
IN WITNESS WHEREOF the Town Commission of Ocean Ridge and Town Council of Briny Breezes have duly authorized their respective Mayors and Town Clerks to set their hands and seals hereto in lawful execution of this Interlocal Agreement and for the purposes hereof, the last date of execution shall be considered the date hereof.

TOWN OF BRINY BREEZES

By 
Samuel Gene Adams
Mayor

By 
Christina Adams
Town Clerk Pro Tem

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


Keith Davis

Attorney for Town of Briny Breezes
TOWN OF OCEAN RIDGE

By _____
Steve Coz
Mayor

By _____
Tracey L. Stevens
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

R. Brian Shutt
Attorney for Town of Ocean Ridge

Ocean Ridge Police Department

Inter-Office Memo

To: Tracey Stevens, Town Manager
Via: Direct
From: Chief Richard Jones & Billy Armstrong
Date: May 12, 2022
Expiration/Cancellation Date: N/A
Subject: Old Ocean Review and Comments

Speed Humps

Billy and I have conducted lots of research on speed humps and have even installed a few ourselves over the last 6 years. During this time, we have learned of 3 options relating to speed humps. The first is asphalt installed speed humps. The second is removable speed humps for speeds below 15 miles per hour. The third is removable speed humps for speeds below 25 miles per hour.

Although two of these options are considered removable, they truly are not removable. These humps require approximately 200 holes to be drilled into the asphalt so that they can be bolted into the ground. These anchors are not removable without damaging the asphalt. Additionally, if the humps were removed, an asphalt repair would be required to protect the asphalt base from deterioration caused from the drilled holes.

No matter which option is chosen, the speed humps create a new safety concern. Once installed, they become a trip hazard for pedestrians and a safety concern for cyclists.

The costs of these humps are as follows:

1. Asphalt installed humps are estimated to cost about \$4,000.00 each.
2. The removable humps are estimated to cost about \$3,000.00 each plus freight. They weight almost 900 pounds each, which means freight could cost as much as \$500 per hump.

Based upon the costs and all factors discussed above, if these option were considered, staff suggests Asphalt humps instead of removable humps. This option would allow us

Ocean Ridge Police Department

Inter-Office Memo Continuation

to reduce trip hazards and cyclist related safety concerns by creating smother transitions and more definitive angles on each side of the humps. The length of Old Ocean from Beachway Drive to Tropical Drive is approximately 1500 feet. The length of Old Ocean from Adams Road to Thompson Street is approximately 1500 feet. Speed humps are generally placed in a series of 250 to 500 feet apart, to minimize noise.

Based upon these factors, staff would recommend 2-3 speed humps south of Beachway Drive and 2-3 speed humps north of Adams Road.

Signage

Signage is a great idea, however, we need to obtain a legal opinion from the Town Attorney on whether signs that are misleading, such as "Residents Only; local access only" would be legal since the streets are public streets paid for with tax monies from residents and the 1% sales tax that the Town acquires. Additionally, staff would propose the option of removing all street signage from Old Ocean and replacing the signage with enforceable signage condensed onto a limited number of signposts. This would eliminate sign pollution. Staff would propose to use aluminum signs that meet statutory standards and mount them to wooden posts for a more pleasant appearance. Staff would propose that the following signage be installed in this area:

1. Stop Signs
2. No Parking Signs
3. No Loading or Unloading Signs
4. Speed Limit Signs
5. Walk on Left/Cycle on Right Signs (painting on asphalt is an option)

The estimated costs for these signs is approximately \$5,000 dollars. If we were to use custom wooden signs instead, the cost would increase to approximately 4 times that of aluminum.

Digital Speed Signs and Data Collection

Staff would also propose the option of installing two digital speed signs on old ocean. These signs would encourage good speed behavior by saying "Thank You" when a vehicle travels below the speed limit or "Slow Down" when a vehicle travels above the speed limit. These signs cost approximately \$6500 for the pair. These signs would also give us the ability to collect traffic data year-round. This allows us to use data to determine traffic enforcement needs.

Right of Way Clearing

Staff has already been working on clearing the right of way through dune trimmings. This trimming is necessary for pedestrian traffic to have a safe location to step off the roadway, when necessary. This is also necessary to ensure that statutory signage is always visible to traffic.

Ocean Ridge Police Department

Inter-Office Memo Continuation

Striping

Thermo-striping on Old Ocean is a great suggestion, unfortunately, the road is only 20 feet wide. According to the 2001 AASHTO Greenbook, which guides roadway design, 11-foot-wide lanes are normally adequate for design speeds of 45 mph or less, and even have some advantages over wider lanes. However, the Florida Department of Transportation has released some research stating, "In the case of urban arterials it was determined, through an expert panel review process, that lane widths between 10 and 12 feet are acceptable on urban arterials and do not cause safety problems."

If we were to apply 4-inch-wide thermal striping, which is the standard, we would end up having lanes that are 9 feet wide. With that said, to meet the minimum 10-foot-wide lanes, we would need to increase the road width by 2 feet. The costs of this striping are estimated to be approximately \$45,000 dollars.

Additionally, the speed limit could also be thermo-striped on the asphalt. The costs of this striping are estimated to be approximately \$7,200 dollars.

Additionally, stop bars could also be thermo-striped at each stop sign on Old Ocean. The costs of this striping are estimated to be approximately \$3,000 dollars.

Speed Limits

The speed limit on old ocean is currently 20 miles per hour, which is unenforceable under the State Statute. This means that adjusting the speed limit to 13 mph or 16 mph would really have no effect on enforcement. If we were to install speed humps as discussed previously, it would likely resolve the speed concern by design. Staff has no objection to reducing the speed limit but is likely not necessary with the installation of speed humps.

CONCERNED CITIZENS FOR PUBLIC SAFETY ON OR NEAR OLD OCEAN BOULEVARD

As a volunteer group of local concerned residents, we met on 2 consecutive Saturdays to share our concerns and brainstorm possible actions to help deter and slow down vehicular traffic on and near Old Ocean Blvd. We all agreed that our primary concern in this effort is public safety. We had a modest turn-out on April 16th of 10 residents and a much larger group of 20 on the 23rd. We discussed many different ideas, and ultimately voted unanimously to propose the recommendations we are presenting tonight.

The Traffic Study commissioned in 2007 with Simmons & White referred to Old Ocean Boulevard as a recreational pathway and the “Jewel of the Town.” With particular concern to current and future construction just over the Woolbright and Ocean Avenue bridges, and a mounting concern for public safety on this recreational pathway, we are recommending the following improvements be implemented by the start of next season on a trial basis:

1. Install temporary (removable) speed humps (as opposed to speed bumps) on Adams Road, Beachway, and Old Ocean between Beachway and Tropical, since there are no stop signs along that stretch. These would not need to extend the entire width of the road. [Add language of liability w speed bumps vs. humps?]
2. Add signage stating “Residents Only; local access only” at Corinne, Thompson, Adams, and Beachway.
3. Paint a center line down the length of Old Ocean as a visual reminder for vehicular and bicycle traffic to stay to the right, and as a reminder to pedestrians that it is a roadway.
4. Clear the 5’ Right-Of-Way along Old Ocean, particularly on the east side of the road, where overgrown vegetation in many spots does not allow space for pedestrians to move to the side when there is oncoming traffic.
5. Consider lowering the posted speed limit on Old Ocean. If you made it an unusual number, for example, like 13mph or 16mph, it would certainly get people’s attention, both drivers and bikers.

There are other traffic control measures that are under consideration, and we are going to continue to work together as a group. We all agreed that we need to talk to and empower our neighbors to reach out to the police when we see dangerous situations. We are requesting the continued support of the Ocean Ridge Police Department in educating the public and enforcing existing laws. Current efforts of public education have for the most part been well-received. Our hope is that the recommendations we listed, along with continued education and enforcement, will ultimately change behaviors and help to improve public safety on our Jewel of the Town. We sincerely hope that the Commission will discuss these recommendations tonight, as we go into budget season.

MEMORANDUM

TO: MAYOR AND COMMISSIONERS
FROM: CHRISTY GODDEAU, TOWN ATTORNEY
RE: CONSIDERATION OF CONSTRUCTION DURATION EXTENSION AGREEMENT FOR 6273 N. OCEAN BLVD.
DATE: JUNE 6, 2022

The following information is provided regarding the proposed Construction Duration Extension Agreement for 6273 N. Ocean Blvd, Ocean Ridge, FL 33435 ("Property") (property owner is Oceandell Holdings, LLC). The proposed agreement will be presented at the same time the Town Commission considers the Property owner's request for an extension of the building permits for the Property. The Commission's consideration of the request is based on section 67-52 of the Town's code, which states in part:

Following commencement of construction pursuant to a building permit, all construction shall be completed within two years for single family residential estates, or one year for all other buildings or structures, unless extended for no more than one, six-month period by the administrative official, upon a showing of good cause. *Subsequent to the granting of one administrative extension, any additional extensions may be granted by the town commission upon a showing of good cause.* If construction is not completed within the timeframes prescribed in this Code, a financial penalty equal to the cost of the original building permit fee shall be imposed.

(emphasis added). For as long as Town staff can recall, the Commission's consideration of a request for the extension of a building permit is based on the request being placed on the Commission's regular meeting agenda. The matter is not otherwise advertised or noticed; the matter is just part of the Town's regular meeting agenda. As part of its consideration of the matter, the Commission may hear from the requester and/or Town staff and, as required by law, hear any public comment on the same. The Town staff and Commission have never treated a request for the extension of a building permit as a quasi-judicial matter or used or followed any formal procedures for the same (e.g., notices to adjacent property owners are not sent; no one is placed under oath; adversely affected parties are not specifically recognized or afforded additional due process rights; etc.). The matter is simply handled just as it is by the Building Official, as a request seeking an administrative or executive decision. The only difference being that the Commission's decision is made at a public meeting, which is required under section 286.011, Florida Statutes (Florida's Sunshine Law). At this time and for several reasons, it is not recommended that the Town deviate from this past practice.

Since February 7, 2022, when the Town Commission denied a further extension of the building permits at the Property, Town staff and I have worked with the Owner's attorneys and the owner on the proposed agreement to address issues with the construction project and complaints voiced by neighbors. We also met with the attorney for the neighbors and have attempted to obtain their input on the proposed agreement. The Property owner has hired a new contractor to complete the single family home at the Property, who Town staff is informed is ready to proceed if the extension request is granted and the permits renewed. The Owner is requesting a final extension timeframe of **one (1) year ("Construction Deadline")**. In support of that request, the proposed agreement has the following material provisions:

1. The Owner must promptly renew all permits (including sub-permits) and pay the original permit fee of \$44,515 to the Town (within 30 days of the proposed agreement's effective date).
2. The Owner must provide the Town with a \$450,000 irrevocable letter of credit to cover the costs to the Town for potential demolition if the Construction Deadline is not met (within 30 days of the proposed agreement's effective date).
3. The Owner must modify the front façade to be in compliance with the Town's code (e.g., (see Exhibit "B")) and modify the flat roof deck area to be in compliance with the Town's code for useable flat roof deck areas (e.g., limited to no more than 20% of the total horizontal ground surface area covered by the roof) (plan revisions and building modifications must be made prior to the end of the Construction Deadline).
4. The Owner must cease all generator use at the Property for construction (unless due to a documented emergency with the Building Official).
5. There is a Force Majeure clause associated with the Construction Deadline to address emergencies that are beyond the reasonable control of the Property owner and delay the work. Final decision on any extension of the Construction Deadline shall be by the Town Manager, whose decision must be reasonable.
6. If the Town and/or Owner are sued by a third party(ies) over the proposed agreement, the Owner has agreed to indemnify and defend the Town from any such lawsuit.
7. The Town agrees to stay the accruing \$250 code compliance daily fine as of the date the renewed permits are issued. If the Property owner meets the Construction Deadline and all other terms and conditions of the proposed agreement are satisfied, the maximum fine will only be the fine that has accrued up to the date prior to the issuance of the renewed permits. The Property owner may pursue a fine reduction consistent with the Town's code thereafter.

Also attached is my prior memorandum providing background information on this matter.

I am seeking a motion and vote on this matter. Proposed motions include:

*Motion to **approve** the request for the extension of the building permits at 6273 N. Ocean Blvd. with the Construction Duration Extension Agreement.*

*Motion to **deny** the request for the extension of the building permits at 6273 N. Ocean Blvd. and the proposed Construction Duration Extension Agreement.*

Should you have any questions regarding the above, please do not hesitate to contact me.

Attachments:

Proposed Construction Duration Extension Agreement for 6273 N. Ocean Blvd.

Prior Memorandum on 6273 N. Ocean Blvd.

Return to:
Town of Ocean Ridge
Attn: Town Clerk
6450 N. Ocean Blvd.
Ocean Ridge FL 33435

CONSTRUCTION DURATION EXTENSION AGREEMENT

THIS CONSTRUCTION DURATION EXTENSION AGREEMENT ("Agreement") is entered into and made on June _____, 2022, by and between the **Town of Ocean Ridge, Florida**, a Florida municipal corporation ("Town") and **Oceandell Holdings, LLC**, a Florida limited liability company ("Owner").

RECITALS:

WHEREAS, on September 10, 2013, the Town approved the Owner's request to develop a new single family home at 6273 N. Ocean Blvd, Ocean Ridge, FL 33435 (Parcel Control Number: 46-43-45-27-07-007-0090) ("Property") with the construction duration approved for a period of 18 months; and

WHEREAS, on May 8, 2015, the Town issued building permits for construction of the new single family home at the Property; and

WHEREAS, previous Town building officials granted multiple extensions of the 18-month construction time period to construct the new single family home at the Property; and

WHEREAS, during these extensions, modifications were made to the plans for the new single family home which the Town believes may not be in compliance with the Town's code of ordinances including a flat roof deck area in excess of twenty percent (20%) of the total roof area and a front façade with no pass-through openings or substantial articulation; and

WHEREAS, the improvements to the home enumerated in the previous WHEREAS provision, the Owner believes may be consistent with the Town's zoning code and have been approved by the Town's prior building officials and current zoning official; and

WHEREAS, the Owner constructed the new single family home based on the approved extensions of time which may have included approval of the aforementioned modifications; and

WHEREAS, on November 2, 2020, the Owner's representative appeared before the Town

Commission to request another extension of time until May 2021, which the Town Commission granted to July 21, 2021 due to concerns with the status of construction; and

WHEREAS, when the Owner failed to complete construction by July 21, 2021, the Town pursued a code enforcement case for failure to timely complete the construction; and

WHEREAS, at the code enforcement hearing, the Special Magistrate found the Property in violation and assessed a \$250 per day fine against the Property, which continues to accrue until construction is completed with a final certificate of occupancy; and

WHEREAS, at the code enforcement hearing, the Owner's representative requested until February 6, 2022 to complete construction, which the Town administratively granted to provide time to the Owner to bring the code violation into compliance; and

WHEREAS, the Town advised the Owner's representative to request another extension of time from the Town Commission when the construction was not completed by February 6, 2022; and,

WHEREAS, on February 7, 2022, the Owner's representative appeared before the Town Commission to ask for another extension of time which the Town Commission did not grant; and

WHEREAS, since February 7, 2022, the Owner has hired a new contractor to complete the single family home at the Property with a proposed one (1) year timeline for such construction as the existing external structure on the Property is substantially built-out consistent with prior approved plans of the Town; and

WHEREAS, the Town and Owner desire to see the construction at the Property completed without further delay and desire to formalize an agreement to accomplish the same; and

WHEREAS, it is the intent of the Town and Owner that this Agreement be binding upon them as well as their respective officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, grantees, and affiliates; and,

WHEREAS, the Town and Owner has determined that entering this Agreement is in the best interests of the Town and Owner and serves a valid public purpose.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and consideration set forth in this Agreement, the sufficiency of which both the Town and Owner hereby acknowledge, and with the intent to be legally bound, the Town and Owner agree as follows:

1. The foregoing recitals are incorporated into this Agreement as true and correct statements as if set forth herein in their entirety.

2. This Agreement is subject to approval by the Town's Town Commission at a public meeting. If this Agreement is approved by the Town Commission, the Town Manager shall be authorized to execute this Agreement and the effective date of this Agreement shall be the date of the Town Manager's execution. Within thirty (30) days of the effective date, the Owner shall apply

to the Town to have all permits renewed, pay the renewal permit fee of Forty-Four Thousand, Five Hundred Fifteen Dollars (\$44,515.00) and provide the letter of credit described in paragraph 4 (below) to the Town. If the Owner fails to provide the foregoing within thirty (30) days of the effective date of this Agreement, this Agreement shall be void and of no further effect. The Owner shall pursue modifications to any permits necessitated by this Agreement after renewal of all permits and be responsible for all applicable modification fees. If within thirty (30) days of the effective date of this Agreement, the Owner applies to the Town to have all permits renewed, pay the renewal permit fee of Forty-Four Thousand, Five Hundred Fifteen Dollars (\$44,515.00), and provides the letter of credit described in paragraph 4 (below) to the Town, the Town will promptly issue a renewal of all permits.

3. The Owner agrees that the construction of the single family home at the Property (and all construction related thereto) will be completed by no later than **twelve (12) months** from the Town's issuance of the renewed permits ("Construction Deadline"). For avoidance of doubt, the Construction Deadline is the date by which all work under the Town issued main permit #16219 and all associated sub-permits will be completed with a final certificate of occupancy issued by the Town confirming the work is completed according to the plans on record with the Town at the time of the Owner's application for a final certificate of occupancy. If the Owner must modify the main permit #16219 or any of the associated sub-permits for any reason including without limitation to be in compliance with this Agreement, the modifications will be subject to the Construction Deadline. Except to address life safety and emergency issues, the Town will not issue any new building permits for the Property until the Construction Deadline is satisfied.

4. As further assurance of the Owner's commitment to the Construction Deadline, the Owner will provide the Town with an irrevocable letter of credit in substantially the same form as the sample irrevocable letter of credit attached hereto and incorporated herein as **Exhibit "A"** and in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00). The irrevocable letter of credit shall be issued by a nationally recognized banking institution doing business in the State of Florida with at least one (1) physical branch location in Palm Beach County, Florida. The irrevocable letter of credit shall have an initial term of **eighteen (18) months**. The executed original irrevocable letter of credit must be provided to the Town before the Town will renew the permits set forth in paragraph 2 (above). If the Construction Deadline is satisfied, the Town will return the original letter of credit to the Owner and this Agreement will expire; however, the requirements and prohibitions set forth in paragraph 6 (below) shall survive the expiration of this Agreement as set forth therein.

5. The Owner also agrees to the following requirements and prohibitions to address issues related to the current as-built status of the single family home at the Property:

A. Since the Town has approved the temporary electric power pole at the Property and Florida Power & Light has installed its temporary meter, use of a generator(s) at the Property for construction or in support of construction shall cease (unless in the case of an emergency that is promptly documented with the Town's building official).

B. The front façade shall be revised to satisfy the criteria set forth in section 64-1(e) and figures 64-1 and 64-2 of the Town's code of ordinances. For avoidance of doubt, the Town has reviewed the Owner's proposed rendering attached as **Exhibit "B"** showing modifications to the front façade, which modifications comply with section 64-1(e) and

figures 64-1 and 64-2 of the Town's code of ordinances. If any revisions are made to Exhibit "B" prior to the Owner submitting the finalized plans to the Town for the permit modification for the front facade, such revisions must comply with section 64-1(e) and figures 64-1 and 64-2 of the Town's code of ordinances.

C. The flat roof area to be used as a deck, porch, or useable outdoor space ("Flat Roof Deck") must comply with figure 64-4 of the Town's code of ordinances. For avoidance of doubt, the total horizontal ground surface area covered by the roof is **11,039 sq. ft.; thus,** the Flat Roof Deck shall not exceed twenty percent (20%) or **2,208 sq. ft.** If any revisions are made to the Flat Roof Deck, such revisions must comply with figure 64-4 of the Town's code of ordinances regarding the Flat Roof Deck.

If any of the foregoing requirements or prohibitions are violated prior to the Construction Deadline, the Town may enforce the foregoing through a community standards enforcement (code enforcement) proceeding. For purposes of such proceeding, the foregoing requirements and prohibitions shall be deemed conditions of the Town Commission's grant of an extension for the duration for construction under section 67-52 of the Town's code of ordinances. After the Construction Deadline, the foregoing requirements and prohibitions shall be deemed conditions of development and enforceable as if set forth in the Property's site plan and/or development order for the single family home and shall run with the land. Further, this Agreement shall be recorded in the Official Records in and for Palm Beach County, Florida, to provide notice of the requirements and prohibitions herein to all future owners, assigns, purchasers and other interested parties.

6. **Force Majeure.**

A. A "**Force Majeure Event**" is any of the following events occurring after the effective date of this Agreement, which are beyond the reasonable control of the Owner and delay the work necessary to satisfy the Construction Deadline: (i) acts of God; (ii) hurricane, floods, fires, earthquakes, explosions, or other natural disasters; (iii) wars, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots, or other civil unrest; (iv) embargoes or blockades; (v) epidemics, pandemics, or other national or regional public health states of emergency; (vi) strikes, labor stoppages or slowdowns, or other industrial disturbances; (vii) shortages of supplies, adequate power, or transportation facilities; (viii) court order and/or court injunction that specifically stops the work; (ix) other similar events. A "Force Majeure Even" shall not necessarily exist because the Governor issued a declaration of a state of emergency as referenced in section 252.363, Florida Statutes. Further, since there is a pending code enforcement case against the Property, the Owner is not entitled to have the Construction Deadline tolled or extended by section 252.363, Florida Statutes.

B. The Owner shall not be deemed to have defaulted under or breached the Construction Deadline for any failure or delay in completing the work necessary to satisfy the Construction Deadline when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or delay of the Owner to complete the work due to a Force Majeure Event and the Construction Deadline shall be excused for the duration of the Force Majeure Event and shall be extended for a period equivalent to the period of such failure or delay caused by the Force Majeure Event. The Owner and Town shall agree and formalize in writing all extension(s) to the Construction Deadline for a Force Majeure Event(s). If there are any

disputes between the Owner and Town as to the duration of the Force Majeure event and resulting extension of the Construction Deadline, the Town's Town Manager shall have the authority to make the final determination as to the duration of the Force Majeure event and extension of the Construction Deadline, which determination shall be reasonable and not unreasonably delayed or conditioned.

C. In the event of a Force Majeure Event, the Owner shall give written notice to the Town within seven (7) days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue ("Initial Notice"). The Owner shall include any and all supporting documents with the Initial Notice. The Owner shall use diligent, reasonable best efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized completion of the work and the Construction Deadline. The Owner shall resume work as soon as reasonably practicable after the removal of the Force Majeure Event or the effects thereof. The Owner shall give written notice to the Town within ten (10) days after the work has resumed informing the Town of the exact number of days the Owner is seeking to have the Construction Deadline extended ("Second Notice"). The Owner shall include any and all additional supporting documents with the Second Notice. Failure to timely provide the Initial Notice will result in the Force Majeure Event being waived to the extent of the Owner's failure to provide the Initial Notice. Failure to timely provide the Second Notice will result in the Town's Town Manager determining in her sole and absolute discretion the extent of any extension of the Construction Deadline.

7. Except where the Town and Owner have agreed to extend the Construction Deadline due to a Force Majeure Event, if the Construction Deadline is not met for any reason or no reason at all, the Owner agrees that the Town and its officials, employees, contractors, and representatives, shall have the right, but not the obligation and without notice or process to the Owner, to any and all of the following actions at the Town's sole and absolute discretion:

- A. Deem all open permits for the Property abandoned and issue and post a stop-work order to any and all persons at the Property;
- B. Immediately enter the Property and secure the Property from further construction and all use, and terminate all electrical and water/sewer connections;
- C. Promptly commence demolition of all structures on the Property and bring the Property into compliance with the Town's code of ordinances as a vacant lot; and,
- D. Pursue any and all violations at the Property through community standards enforcement (code enforcement) including, without limitation, a repeat violation for the duration of construction under the Town's code of ordinances.

8. Except where the Town and Owner have agreed to extend the Construction Deadline for a Force Majeure Event, if the Construction Deadline is not met for any reason or no reason at all, the Town shall have the right to draw all monies down from the Letter of Credit and, in the Town's sole and absolute discretion, utilize said sums covering any and all costs and expenses of the Town to demolish the structures at the Property and any other actions necessary and reasonably related thereto.

9. If the Construction Deadline is met and all other terms and conditions of this Agreement have been or are being satisfied, the Town agrees that the Town will consider the Property in compliance as of the date of issuance of the renewed permits (as noted in paragraph 2 above) for the sole and limited purpose of considering a request to reduce the accrued fine amount under the code enforcement lien consistent with the Town's code of ordinances. For avoidance of doubt, to request a lien reduction, the Property must be in compliance with all of the Town's code of ordinances including without limitation in receipt of a final certificate of occupancy. However, if the Construction Deadline is not met or the Owner otherwise fails to satisfy all other terms and conditions of this Agreement, the accruing fine amount shall continue to accrue until the Town issues a final certificate of occupancy for the Property.

10. Except as provided in paragraph 17 and paragraph 22 (below), each party agrees to bear its own fees and costs arising from and in connection with this Agreement.

11. The Town and Owner acknowledge that they have read and fully understand all of the provisions contained in this Agreement. Both parties each further acknowledge and affirm that they are able to understand this Agreement in its entirety, and that this Agreement is being entered and executed by both of them hereto knowingly and voluntarily of their own free act and deed.

12. This Agreement constitutes the entire agreement and understanding between the parties. No statement, remark, agreement, or understanding, oral or written, which is not contained in this Agreement shall be recognized or enforced.

13. The Town and Owner acknowledge and agree that this Agreement is intended to and shall be binding upon their respective officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, grantees, and affiliates.

14. The Town and Owner recognize and acknowledge that this Agreement memorializes the desire to complete construction at the Property and nothing in this Agreement shall be construed to be an admission of any kind, whether of fault, liability, or of a particular policy or procedure, on the part of the Town or Owner.

15. The Town and Owner acknowledge and agree that this Agreement is the product of mutual negotiation and no doubtful or ambiguous language or provision in this Agreement is to be construed against any party based upon a claim that the party drafted the ambiguous provision or language or that the party was intended to be benefited by the ambiguous provision or language.

16. This Agreement may be amended only by a written instrument specifically referring to this Agreement, which receives the Town Commission's approval, and is then executed with the same formalities as this Agreement.

17. If any action or proceeding is commenced with regard to the subject matter of this Agreement as between the Owner and the Town, then the prevailing party in such action or proceeding shall be entitled to have its reasonable attorney's fees and costs (at the trial and all appellate levels) incurred in said action or proceeding promptly reimbursed by the non-prevailing party.

18. In the event of an alleged breach of this Agreement, the Town and Owner agree that the sole remedy for breach of this Agreement shall be for specific performance of its terms and conditions or for damages arising from the breach thereof and attorney's fees and costs as stated in paragraph 17 (above). In this regard, the Town and Owner further agree that the sole venue for any such action shall be in Palm Beach County, Florida. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall be construed as a waiver of the Town's right to sovereign immunity under the law.

19. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

20. The laws of the State of Florida shall govern this Agreement.

21. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

22. The Owner agrees to assume all liability for and indemnify, hold harmless, and defend the Town, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind by a third party(ies) which challenges this Agreement in whole or in part ("Claims"). The Owner shall assume control of the defense of any Claims and, in connection with such defense, shall appoint lead counsel, in each case at the Owner's sole cost and expense. The Town shall have the right, at its option, to participate in the defense of any Claim, without relieving the Owner of any of its obligations hereunder. If the Owner assumes control of the defense of any Claim in accordance with this paragraph, the Owner shall obtain the prior written consent of the Town before entering into any settlement of such Claims. In the event that the Town determines that the Owner has failed or is failing to prosecute or defend vigorously the Claims, or if the Town determines that an adverse determination with respect to the Claims would be detrimental in any material respect to the Town's reputation, or if the Claims seek an injunction or equitable relief against the Town, the Town may appoint its own legal counsel, at full expense and cost of the Owner. The Town's Town Manager shall consult with the Owner's legal counsel prior to making such a determination(s). Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any Claims and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

23. The parties further agree that time is of the essence in all respects regarding this Agreement.

24. The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same instrument. Furthermore, the parties agree that an electronic or digital copy of a party's signature shall be deemed the equivalent of an original.

25. Each person signing this Agreement represents and warrants that he or she has fully authority to executed it on behalf of himself or herself, or on behalf of the entity on whose behalf he or she signs.

26. There are no third party beneficiaries to this Agreement.

27. Nothing in this Agreement shall prevent or preclude the Town from pursuing any violations of the Town's code of ordinances and/or the Florida Building Code that occur after effective date of this Agreement. Any such violations shall be pursued by the Town in accordance with all applicable enforcement procedures.

[Remainder of this page intentionally left blank]

[Signature page follows]

Draft

IN WITNESS WHEREOF, the Town and Owner have signed this Extension of Construction Duration Agreement (6273 N. Ocean Blvd.) as set forth below:

ATTEST:

**Town of Ocean Ridge, Florida,
a Florida municipal corporation**

By: _____
Karla Armstrong
City Clerk

By: _____
Tracey Stevens
Town Manager

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Christy L. Goddeau, Town Attorney

Oceandell Holdings, LLC

[Corporate Seal]

By: _____

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this _____ day of _____ 2022, by _____, as the _____ [title] of Oceandell Holdings, LLC, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the Oceandell Holdings, LLC, to the same.

Notary Public Signature

Notary Seal:

Exhibit "A"

Sample Irrevocable Letter of Credit

DATE _____

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

EXPIRATION DATE: _____

Town of Ocean Ridge
6450 N. Ocean Blvd.
Ocean Ridge, FL 33435

Re: _____

We, _____ [Bank], hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of Town of Ocean Ridge, Florida, a Florida municipal corporation, hereinafter referred to as "Beneficiary", at the request of _____, hereinafter referred to as "Applicant", in an amount not to exceed in the aggregate Four Hundred Fifty Thousand and 00/100 U.S. Dollars (\$450,000.00).

Funds are available by your sight draft drawn on us bearing the clause: "Drawn under [Bank] Letter of Credit No. _____ dated _____" and accompanied by the following documents:

1. The original of this Letter of Credit and any amendments thereto.
2. A statement signed by the Town Manager or designee of Beneficiary which reads:

"We hereby certify that the draft accompanying this statement drawn under [Bank] Letter of Credit No. _____ represents the amount due under that certain Agreement dated _____ 2022, between the Beneficiary and the Applicant."

The Bank hereby undertakes with you to honor each request drawn under and in compliance with the terms of this Letter of Credit on or before the expiration date. Presentation of drafts and certificates via courier shall be permitted hereunder. The Bank will honor your request(s) drawn under and in compliance with this Letter of Credit without inquiring whether you have a right, as between the Beneficiary and the Applicant, to make such request and without recognizing any claims of the Applicant.

It is a condition of this Letter of Credit that it shall be extended automatically without amendment for additional one (1) year periods from the present or any future expiration date, unless at least sixty (60) days prior to the then current expiration date, we notify you in writing by overnight courier, at the above address, that we elect not to renew this Letter of Credit for said additional period.

Upon receipt by you of such notice, you may draw hereunder by your draft on us, payable at sight, in an amount up to the then current available outstanding balance.

Any number of partial drawings and multiple presentations are permitted under this Letter of Credit. The amount of this Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder. All charges relating to the issuance of this Letter of Credit are for the account of the Applicant.

This Letter of Credit is transferable in its entirety, but not in part. Transfer of this Letter of Credit is subject to our receipt of instruction on the form attached hereto as Exhibit 1, signed by a purported

officer/representative of the Beneficiary, accompanied by the original Letter of Credit.

[DATE]

Irrevocable Standby Letter of Credit No.

Page 2

This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or contract referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or contract.

We hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon receipt of documents as specified above, which may be presented in person or sent via overnight courier to our office located at _____ on or before the expiration date noted above or any extended date.

The Beneficiary may make inquiries regarding this Letter of Credit, by way of writing, addressed to the Bank's address or by telephone at _____.

Except as otherwise specified herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision,) International Chamber of Commerce Publication No. 600.

[BANK]

EXHIBIT 1
STANDBY LC REQUEST FOR FULL TRANSFER

Date: _____

[BANK]

Attn: Standby Letter of Credit Department

Re: Standby Letter of Credit No. DRAFT

PLEASE TYPE OR NEATLY PRINT INFORMATION BELOW

For value received, the undersigned beneficiary hereby irrevocably transfers to:

(Name of Transferee)

(Address) include Apt., Suite, Floor #

City, State, Zip Code

Attention Party and Phone No.

the referenced Standby Letter of Credit and all rights of the undersigned beneficiary to draw under the above Standby Letter of Credit in its entirety or up to the remaining available balance if prior drawings have been made under the Standby Letter of Credit and any amounts thereof have not been reinstated.

By transfer of the referenced Letter of Credit, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee who shall have the sole rights as beneficiary thereof, including sole rights to any amendments whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary. As such, no further consent of or notice to the undersigned beneficiary shall be required of [BANK] in connection with such Standby Letter of Credit Amendments.

We are enclosing the original Standby Letter of Credit and any amendments to date so that you may deliver same to the transferee together with your customary letter of transfer.

We agree to indemnify and hold you harmless from and against any and all claims, losses or damages of any nature whatsoever (including but not limited to attorney and paralegal fees and disbursements, including, without limitation, any such fees and disbursements arising in any bankruptcy case or proceeding), arising directly or indirectly from the transfer requested herein or from any other matters related to this Agreement, except as may be attributable to Bank's gross negligence or willful misconduct.

BENEFICIARY NAME

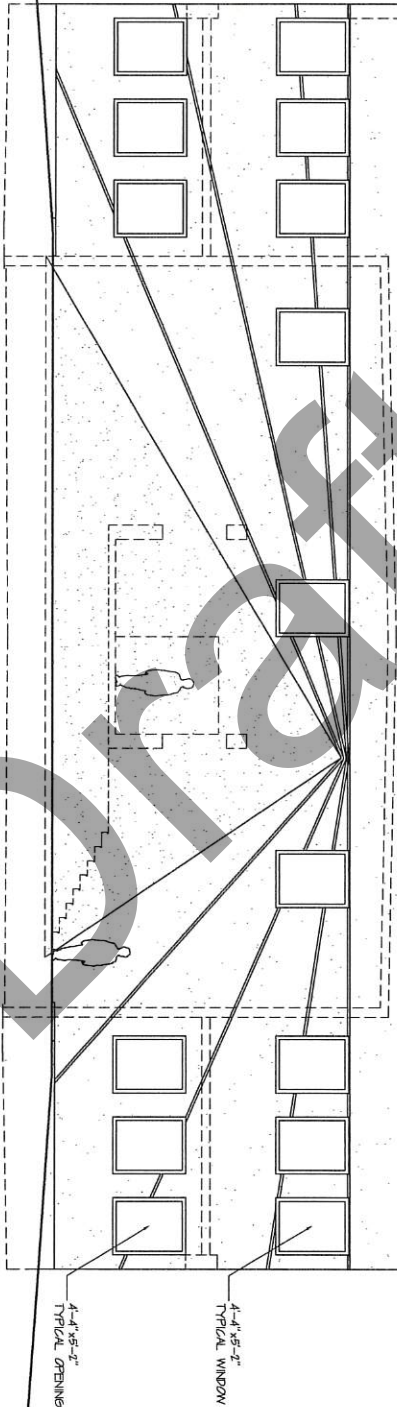
SIGNATURE AUTHENTICATION

By: _____

Date: _____

EXHIBIT “B”
(Revised Front Façade – one page)

Draft



WEST ELEVATION

SCALE: 1/4"=1'-0"

ELEVATION CALCULATIONS

WEST ELEVATION - 7225 SQ. FT. (60%)
WINDOWS AND OPENINGS - 794 SQ. FT. (9.5%)

Exhibit "B"
1 of 1

NO. 12076	DATE BY: DLT
SHEET	
A-3.0C	

FLORIDA AAC
NO. 001285
HAROLD J. SMITH
REGISTERED ARCHITECT
SMITH AND MOORE ARCHITECTS, INC.
1500 SOUTH OLIVE AVENUE, WEST PALM BEACH, FLORIDA 33401
TEL (561) 835-1888 FAX (561) 832-7015
DANIEL KAHAN
REGISTERED ARCHITECT
SMITH AND MOORE ARCHITECTS, INC.
1500 SOUTH OLIVE AVENUE, WEST PALM BEACH, FLORIDA 33401
TEL (561) 835-1888 FAX (561) 832-7015

NEW RESIDENCE
6273 NORTH OCEAN BLVD.
6273 NORTH OCEAN BOULEVARD, OCEAN RIDGE, FLORIDA

SMITH AND MOORE ARCHITECTS, INC.
1500 SOUTH OLIVE AVENUE, WEST PALM BEACH, FLORIDA 33401 • TEL (561) 835-1888 FAX (561) 832-7015





1
A-3B
SHADED WEST ELEVATION
SCALE: 1/4"=1'-0"

S.M

NEW RESIDENCE
6273 NORTH OCEAN BLVD.
6273 NORTH OCEAN BOULEVARD, OCEAN RIDGE, FLORIDA
SMITH AND MOORE ARCHITECTS, INC.
• 1500 SOUTH OLIVE AVENUE WEST PALM BEACH, FLORIDA 33401 • TEL (561) 835-1888 FAX (561) 832-7015 •

FLORIDA AAC

NO. 001285

HAROLD J. SMITH
REGISTERED ARCHITECT 8742

JONATHAN C. MOORE
REGISTERED ARCHITECT 13541

PETER G. PAPADOPOULOS
REGISTERED ARCHITECT 92952

DANIEL KAHAN
REGISTERED ARCHITECT 94757

DESIGN DEV.	2013-02-08
LAND DEVELOPMENT	2013-07-26
CONTRACTOR REVIEW	2014-06-09
PERMIT SUBMITTAL	2015-1-26
PERMIT REVIEW	2015-4-20
ROOF REVISED	2016-4-29
AS CLOUDED	2017-03-13
AS CLOUDED	2017-03-23
AS CLOUDED	2017-12-14
AS CLOUDED	2018-06-18
AS CLOUDED	2018-08-21
AS CLOUDED	2019-01-13
AS CLOUDED	2020-03-05

NO: 12076
DWG. BY: G.L.
SHEET:

A-3.0B



1
A-3.0B
SHADED WEST ELEVATION
SCALE: 1/4"=1'-0"

S·M

NEW RESIDENCE
6273 NORTH OCEAN BLVD.
6273 NORTH OCEAN BOULEVARD, OCEAN RIDGE, FLORIDA
SMITH AND MOORE ARCHITECTS, INC.
• 1500 SOUTH OLIVE AVENUE WEST PALM BEACH, FLORIDA 33401 • TEL (561) 835-1888 FAX (561) 832-7015 •

FLORIDA AAC

NO. 001285

HAROLD J. SMITH
REGISTERED ARCHITECT #742

JONATHAN C. MOORE
REGISTERED ARCHITECT 13541

PETER G. PAPADOPOULOS
REGISTERED ARCHITECT 92952

DANIEL KAHAN
REGISTERED ARCHITECT 94757

DESIGN DEV.	2013-02-08
LAND DEVELOPMENT	2013-07-28
CONTRACTOR REVIEW	2014-06-09
PERMIT SUBMITTAL	2015-1-26
PERMIT REVIEW	2015-4-20
ROOF REVISED	2016-4-25
AS CLOUDED	2017-03-17
AS CLOUDED	2017-03-27
AS CLOUDED	2017-12-14
AS CLOUDED	2018-06-18
AS CLOUDED	2018-08-21
AS CLOUDED	2019-01-17
AS CLOUDED	2020-03-05

NO: 12076
DWG. BY: G.L.
SHEET:

A-3.0B

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Town Manager, Tracey Stevens

Meeting Date: June 6, 2022
Subject: Porter Street Crossover Repairs

Mayor & Commissioners:

The Town budgeted \$15,000 to repair the Porter Street crossover in the current FY22 budget. However, due to inflation from the effects of the COVID-19 pandemic, prices are much higher than expected and are over the Town's threshold for competitive selection, which was not expected. In addition, prices are increasing at a fast pace. Due to that, staff recommends the Town Commission utilize the best interest acquisition provision in the Town Code and to move forward with the lowest quote that was received from Benchmark Painting & Carpentry in the amount of \$59,844 for composite decking and railing pickets which will last longer.

Town Code Section 2-217 (b)(12) Best interest acquisitions. The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes, as set forth in this code or the town's purchasing policy, where the town commission declares by at least a four-fifths affirmative vote that the sealed competitive method or obtaining written quotes is not in the best interest of the town. The town commission shall make specific factual findings that support its determination, and such contracts shall be placed on the regular town commission agenda.

Respectfully,



Tracey L. Stevens, MMC
Town Manager & Finance Director

Your Project
6450 N Ocean Blvd
Boynton Beach, FL 33435



About Your Estimator



Martin Devincenti
President

Martin comes from a family of proud contractors. Three of his four brothers are in the profession and gave Martin his early training. His father is also a registered architect and received his master's degree in urban planning. Following in his father's footsteps, Martin began studying architecture and drafting at Santa Monica College. Martin then started an internship at Keeva J. Kekst Architects in Los Angeles but soon realized that entrepreneurship was his true passion. Starting from the ground up, he worked as a carpenter and painter on many important projects in the West LA area including the personal home of world-renowned architect, Frank Gehry. After spending several years working in the Los Angeles area, Martin decided to move back home to the DC Metro area to be close to his family and start Benchmark in 1995. In 2006, He moved to West Boynton Beach to start our second location. He also became a leader in local painters' organizations and is the past president of both the Washington Metro chapter and the Palm Beach County chapter of the Painting & Decorating Contractors of America (PDCA). Martin is a proud father of two children and avid fitness and health enthusiast.



Benchmark Painting & Carpentry
1726 Corporate Drive
Boynton Beach, FL 33426
561-375-6249
FL State Certified General Contractor #1521782

Martin Devincenti
President
561-424-1146
martin@benchmarkpainting.com

Proposal

CONTACT	JOB ADDRESS	PROPOSAL ID	DATE
Bill Armstrong Town of Ocean Ridge 6450 N Ocean Blvd Boynton Beach, FL 33435	Old Ocean Blvd	1056	05/19/2022
			EXPIRES
			06/18/2022

Proposal

Item #

Scope of Work:

1. Demo complete walkway structure and steps and haul away. Pilings to remain.
2. Frame new stair framing in same configuration with marine grade pressure treated lumber.
3. Frame all supports and joists with marine grade pressure treated lumber.
4. Install top decking with WearDeck composite material in a standard color.
5. Install railing and pickets with WearDeck composite material in the same configuration.
6. All hardware and thru bolts to be stainless steel.

Inclusions and Exclusions

Base bid includes labor and materials.

Base bid excludes any items not mentioned above or plans and permits.

Time required to complete project (not including optional items)

3 - 4 weeks to complete weather permitting.

License & Insurance

FL State Certified General Contractor License #CGC1521782. [Search here](#) or view "Documents" page on left side of proposal. General Liability & Worker's Compensation certificates are available upon request. Please call our office at 561-375-6249 and we will be happy to email you a copy.

Payment Schedule

The Total Payment amount due in consideration for the Scope of Services stated above is \$59,844.00 subject to other applicable provisions of this Agreement. This amount is independent of any Change Orders or other amendments that may occur.

The Total Payment amount shall be due, in successive portions, at the following points, and in the following amounts:

- Initial Deposit - \$29,844.00 due within three (3) days of Agreement execution. Otherwise, delays may occur.
- Progress Payment - \$15,000.00 after demo due upon request.
- After Completion - \$15,000.00 due upon day of completion.

The quoted price is for e-check/bank transfer, check, and cash payments only. We gladly accept all major credit cards for an additional 3% of the total project cost. The approved signed contract and deposit payment are both required to hold a project start date.

Total **\$59,844.00**

Client Responsibilities and Expectations, Limitations

- Client shall provide reasonable access to facilitate the ongoing completion of the Scope of Work.
- Client shall ensure and guarantee to the Contractor that all parking, ingress, staging, work areas, and egress to and relating to the work area is in compliance with all access rights, covenants, HOA regulations, and adjoining property rights and fully authorized, permitted, and conveyed.
- Clients shall ensure that all personal property, such as furniture, equipment, wall hangings, artwork, and any similar items, will be moved out of the work areas related to the Project prior to the start of work and any such areas will be clear of obstructions. Personal property can possibly be moved by Contractor as Additional Services at an additional cost. Delays and actions relating to unmoved items imposed upon Contractor will result in additional costs. Client expressly waives any claim for damage, loss of use, loss, or other form of economic consideration due to items being moved by Contractor upon Client's request. Client affirms Contractor is not in the primary business of moving personal property items and will only provide ancillary services in such regard upon request to facilitate the Scope of Services.
- For exterior project services, Client will notify the Contractor of sensitive landscaping areas, plants, and other living organisms or décor prior to the start of work. Contractor will take reasonable care to protect such property, but Contractor is not liable for any damage, loss, staining, discoloration, or harm such property without express, advance written acceptance of such conditions. Client shall trim and prepare landscaped areas, ground contact lines, and other vegetation in advance of the project. Contractor will not trim or move vegetation, including ground contact lines, as part of the project which could result in an uneven line if not prepared in advance.
- Client shall notify Contractor about and materially deficient action, material, status, or situation as soon as practical. In all cases, Client shall notify Contractor of any objection or concern about any element of work performed, material provided, or resulting status no later than five (5) days after any invoice or payment terms due date as listed above. Client notice of any such situation beyond these terms to Contractor may result in additional costs and payments due.

Scheduling and Timing of the Project

All project scheduling actions are dependent upon signed, written agreements and fully paid and received initial payments or deposits as prerequisites. Any schedule window or range given prior to these actions are provided as an estimate of convenience and in no way binding due to the dynamic nature of Contractor's ongoing production schedules.

Scheduled dates for the project will be presented as a convenience. In normal circumstances, Contractor seeks to maintain this schedule for mutual benefit. Both Parties understand weather, labor factors, supply chain disruptions, and other similar factors can disrupt this schedule. Contractor has the option to change production schedules and project dates at any time and for any reason.

If any regulatory, HOA, or similar approval process is required, Contractor is in no way liable for any delay resulting from the process. Contractor cannot provide a project schedule period until such approval is authorized and final, with notification provided in writing. Any services required by Client to satisfy such an approval process by a third party shall be considered Additional Services. Any delays caused by the Client or a third party relating to this paragraph of this Agreement causing a schedule date delay or the non-payment of any initial payment by the Client to be paid exceeding ninety (90) days from the execution date of this Agreement shall render this Agreement void and terminated. A new Agreement would need to be executed.

Outside of a third-party approval influence as specifically stated above, this Agreement shall be terminated if the initial payment required under this Agreement by the Client is unpaid within seven (7) days of execution.

Product and Color Selections

If applicable, color selections, to include specific color codes and sheens, shall be provided by Client to Contractor no less than seven (7) days prior to the project's scheduled start date. If not provided, the project duration may be extended or delayed to another schedule period. Alternative color selection arrangements, including on-site matching or other Contractor-proposed methods, when included in the Scope of Services, shall supersede this paragraph's requirements.

Contractor will convey, install, and provide products, coatings, and materials based on Client's advance selections. Changes can be elected by Client, but all related work, procurement, restocking fees, demolition, and associated work will be billable in addition to the initial scope of work as Additional Services.

Color-matching actions and results cannot be guaranteed despite Contractor and third-party vendor systems and methods. If the result of the color-match action are not the desired result, Contractor can provide new colors and products as Additional Services or through a Change Order. Contractor is not liable for negative results of color-matching actions.

Late Payment, Default, Remedies

Any amounts due under this Agreement not paid within the times stated will be assessed a late fee equal to 1.5% of all past due amounts immediately upon becoming past due and on the first day of each following month if continuing in a past due status.

In accordance with the payment terms above, any unpaid amounts shall result in the suspension of continued work, provision of materials, or other similar services by the Contractor.

Any amount not paid within fourteen (14) days of any due date shall be considered in default. Contractor may take collections actions to recover any amount in default to include, but not limited to, legal actions, the filing of a lien against Client property, and collections agency actions and reporting. Clients shall be liable for the cost of any such action, including attorney's fees, court costs, and filing fees, relating to collecting any amount in default status and shall be considered an amount due when incurred.

Any payment, regardless of method or form, from Client that fails to clear, bounces, is not supported by sufficient funds, stopped without written notice in advance of such action, or that is not processed as anticipated as a payment for services shall result in a statutory processing fee of no less than the highest of the following: the actual processing costs incurred by Contractor, \$25 (twenty-five dollars), or the maximum amount to be charged in accordance with state law provisions. Additionally, any such failed payment will be disregarded for timely payment term requirements, Late Payment, and Default provisions of this Agreement.

Unforeseen Conditions, Hazardous Materials

The Scope of Services does not include the testing, containment, or remediation of any lead, mold, asbestos, toxic substances, poison gases, or similar hazardous material unless specifically stated in the Scope of Services. Contractor shall notify Client if encountering any such situation or substance and shall stop work in the related area until Client provides for a legal, safe, and suitable resolution.

Contractor has exclusive authority over the situational safety standards for workers on projects and may suspend any action until a safe standard has been achieved.

In addition to the hazardous conditions stated above, unforeseen conditions or circumstances may be encountered while performing the Scope of Services from sources, causes, or factors outside the Scope of Services. These circumstances are those that require repair or remediation outside the Scope of Services. These can be accommodated either possibly as a Change Order with Contractor or more likely through an alternative provider solution. In either case, any such situation will cause delays in the project. Contractor will seek to coordinate the project delays and restarts with other projects, but the Client affirms Contractor's production schedule need not be modified to accommodate a restart or finishing schedule.

All costs and actions relating to the required services, materials, or resources outside of the Scope of Services or in response to or as the result of any hazardous condition or unforeseen situation shall be the sole responsibility of the Client. Contractor is not liable for any costs, loss of use, delays, or other similar form of loss by the Client due to any aspect of this provision. If any delay or stoppage occurs due to this provision and is anticipated to exceed or actually exceeds seven (7) calendar days, Contractor shall submit an invoice to Client for the portion of work completed in relation to the pending invoice amounts. Client shall pay Contractor for such an amount upon receipt and within the other terms of this Agreement.

Changes to Scope

Changes to the Scope of Services shall only be through a mutually agreed upon written Change Order process.

Due to the nature of a Change Order, alteration to plans, timing, procurement logistics, and workloads can significantly affect the Project. The execution of a Change Order will require payment in full before the related work and changes can commence.

Contractor shall have exclusive discretion to suspend or continue Project activities when notified of Change Order intent or while a Change Order is pending execution. In many cases, Change Orders require additional time and effort beyond the initial scheduling period. Contractor has the sole right to determine if a Change Order can be initiated or completed within a concurrent or consecutive project period. Client affirms their Change Order request likely will result in a secondary, delayed project period not concurrent or consecutive with the active project work. Based on Contractor's production calendar, the gap between project windows could be significant.

Optional Items

In any case where Optional Items are listed, included, or otherwise presented in this proposed Agreement, they shall be considered part of the Scope of Services or Payment Terms of this Agreement. If Optional Items are desired to be within the Scope of Services, a proposal edit should be initiated to cause them to be inclusive in a revision of this Agreement. No Optional Item should be considered an anticipated result, service, or product to be delivered under this Agreement.

Additional Services

Any additional amount incurred under the provisions of this Agreement in addition to the Total Amount and outside of an executed Change Order or otherwise defined as Additional Services shall be assessed by the Contractor and due by the Client within the following terms:

- Labor Rate: \$75 per hour, billed by the quarter hour and by general labor worker
- Administrative, Project Management, and Support Services Rate: \$80 per hour, billed by the quarter hour and by worker
- Trade Rate: \$165 per hour, billed by the quarter hour and by licensed, skilled-trade worker
- Materials: Actual cost-plus fifteen percent (15%) administrative markup
- Rental Equipment: Actual cost-plus fifteen percent (15%) administrative markup
- Billing shall be weekly and due upon receipt if no other related payment terms are defined
- All hourly rates listed above will have a one (1) hour daily minimum charge per rate category

Limited Warranty

Contractor provides a Limited Warranty relating to the Scope of Services provided under this Agreement exclusively as expressed herein. This warranty includes the guarantee that all failures or negative changes as a direct result of poor workmanship, installation, or application by Contractor shall be covered for repair or re-work at no cost to the Client for a period ending on the date one hundred-eighty (180) days after the completion date of the Project within the following terms:

Warranty Activation Requirements:

1. The Total Amount relating to the Project is paid in full and
2. Client must have also attended the final walkthrough with Contractor and acknowledged the mutually satisfactory result of all Project results or provided a written waiver of the walkthrough acknowledging satisfactory completion of the Scope of Services.

Transferability:

- The Limited Warranty terms and benefits are non-transferrable to any other party, project, or location and the exclusive right and privilege of the Client as defined in this Agreement.

Exclusions:

This Limited Warranty does not cover:

1. The replacement of any failed or defective materials, hardware, fixtures, or other physical aspect manufactured by a third-party, regardless of manufacturer coverage, recall, or defect,
2. Any work not performed by Contractor or any aspect outside the Scope of Services,
3. Any horizontal surface exposed to moisture,
4. Any cracks, splits, settling, nail or screw pops, or other similar gap or surface defect of drywall, plaster, or similar wall covering or façade,
5. Any plant material or similar landscaping substance, organism, or property, or
6. Any damage, wear, discoloration, or loss related to any:
 - Intentional or negligent misuse,
 - Normal wear and tear,
 - Natural disaster, fire, flood, extreme-weather occurrence, or similar event,
 - Excessive natural exposure, such as direct ocean salt spray, water feature spray, and reflective sun exposure, or
 - Criminal act, such as vandalism and riots, and overt acts of any third parties.

Performance of Limited Warranty Claim Services:

- Clients must notify Contractor as soon as practical upon learning of a defect or failure falling under the Limited Warranty provisions.
- Contractor will review the information provided to determine warranty suitability.
- If suitable, Contractor will respond to and inspect the aspects of concerns or provide a compensation alternative as an option at their sole discretion.

- Contractor will resolve verified Limited Warranty claims within reasonable terms through scheduled service in accordance with current work schedules and capacities.
- Limited Warranty claim services performed by Contractor will not extend the term of this Limited Warranty.

This Limited Warranty is the only warranty made by Contractor and is in lieu of all other warranties, express or implied, whether verbal or written in any form otherwise. This Limited Warranty covers only those services provided to the original Client named in this Agreement and by Contractor as exclusively defined without transferability or assignment of liability or rights. In no event shall Contractor be liable for incidental or consequential damages or damages in excess of the original amount paid by Client. This Limited Warranty may not be altered or extended for any purpose unless done so in writing in a document executed by all parties to this Agreement.

Intellectual Property Rights Waiver, Communications "Opt-Out"

Contractor and its agents and affiliates may use images, video, or design information and other related documentation or evidence of the scope of work, before and after statuses, likenesses of client or related parties, and other similar statements or comments for company marketing, publication, or similar retention dissemination, or use, whether for economic gain or not, without remuneration to client. Client waives any rights to compensation or copyright for such use and expressly grants any such right possessed unilaterally to the company for a perpetual duration.

In the course of business, Contractor may initiate contact with Client through phone calls, emails, text messages, and other forms of electronic communications, using both live agents and automation. These may be considered operational, marketing, advertising, administrative, and business oriented as defined by the various related statutes and regulations. Client affirms Contractor is authorized to communicate using these methods and channels with these purposes in view before, during, and after the Scope of Services is completed. Client may notify Contractor at any time to "opt-out" of any such communication.

Standards

Contractor will complete the Scope of Services within the reasonable standards established by the state licensing authority and the state statutes of the governing law.

Contractor shall not be responsible or liable for the work, results, or craftsmanship completed by or impacted materially by the Client or any other third-party.

Contractor Information

BSG of FL, LLC dba Benchmark Painting and Carpentry, et al is a Licensed General Contractor in the State of Florida (CGC1521782).

Contractor shall provide the Scope of Services using its selection of tools, suppliers, equipment, resources, workers, employees, officers, owners, subcontractors, and agents at its sole discretion.

Governing Law

This Agreement is governed solely and exclusively by the laws of the State of Florida without regard to conflict of laws principles.

Dispute Resolution, Venue

All disputes, claims, and legal actions are solely and exclusively subject to the federal and state courts of proper jurisdiction within and superior to Palm Beach County, Florida. Both Parties expressly waive rights to contest this venue provision, for any reason, including, but not limited to a matter of inconvenience or legal preference.

Amendment and Termination

This Agreement may be amended only by the joint, mutual written consent of both Parties.

Notwithstanding any internal provision to the contrary, this Agreement will become null, ineffective for execution, and non-binding upon the date thirty (30) days after the submission of the Agreement by Contractor to Client if not previously executed by both Parties.

Savings Clause

If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

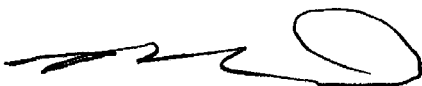
Headings and Construction

Heading elements and paragraph construction are used for reader convenience. No headings, titles, visual markers or similar elements of this Agreement are inherently binding or otherwise contractual elements. The Parties agree the format of this document is clear and acceptable and the use of electronic signatures hold the same weight and authority of ink signatures under law.

Entire Agreement

This Agreement contains the entire understanding among the Parties and supersedes any prior written or oral agreements between them respecting the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

If Client proposes additional written terms in relation to the Scope of Services of this Agreement, as a replacement in part or in whole to this Agreement, to be executed by the Parties after the execution of this Agreement, it shall be viewed as a nullifying action of this Agreement. The Parties may pursue additional terms, but if not, Client shall either withdraw the proposal and perform the provisions of this Agreement as executed or withdraw from the Agreement and make Contractor whole based on the provisions of this Agreement.



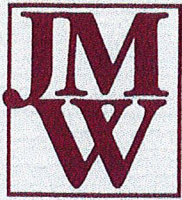
ESTIMATOR SIGNATURE

DATE

CUSTOMER SIGNATURE

DATE

Proposal #1056 for Bill Armstrong
Total value: \$59,844.00



JMW Construction Corp.

CGC025814

4163 Artesa Drive
Boynton Beach, Florida 33436
Office (561) 752-0480
jmw_cc@bellouth.net

May 16, 2022

William Armstrong
Town of Ocean Ridge
Public Works Department
6450 N. Ocean Boulevard
Ocean Ridge, Florida 33435

RE: BID PROPOSAL
Replacement of Beach Deck
REVISED TO INCLUDE PVC RAIL PICKETS TO MATCH RAIL AND DECK

Mr. Armstrong,

We propose to furnish the below listed items of work as necessary to remove and replace the existing ocean front beach deck "deck framing" only and construct a new beach deck of similar layout and design. (see enclosed layout plan).

General Conditions:

Insurance / Tools / Equipment	Included
Building Permit Fees (Prepare plan sketch with Ocean Ridge Permit Application)	See Below
Trash Dumpster(s) and or Removal of Trash from site	Included

Demolition:

Demo & dispose of existing beach deck decking material	Included
--	----------

Carpentry Framing:

Existing Framing:

Existing foundation piling posts to remain	Existing to Remain
Existing PT wood deck stringer and joist framing to remain	Existing to Remain
<ul style="list-style-type: none">JMW will examine existing stringers and joists after the decking material is remove to identify any damaged or rotting structural framing members. We will notify the Town of Ocean Ridge of any un-covered compromised materials and look for direction from Town as to how to proceed.	

Decking:

Furnish and install new 2" x 6" PT deck boards over existing sub-framing	Included
--	----------

Handrails:

Furnish and construct new deck handrails	Included
<ul style="list-style-type: none">Handrail and support mid-rail to be 2"x6" PT lumberPickets to be 2"x2" PT deck-rail pickets spaced at 4" oc.	

Stairs:

Furnish and install new 3" x 12" x 16' PT stair stringers	Included
Furnish and install new 2 x 6" PT stair tread boards	



Benches:

Reconstruct 2 benches to match existing
Furnish and install new 2 x 6" as required for the new bench construction

Included

Fasteners:

- Use stainless steel deck screws Included
 - Replace rusted thru-bolt anchor bolts, nuts & washers with new stainless steel thru-bolt anchor bolts at stringer to post connections Included **
- **A total of 12 bolt replacement locations are anticipated

Total Bid Price	\$ 47,900.00
Building Permit Fee (Allowance)	\$ 1,000.00
Total Bid Price (with PT framing lumber)	\$ 48,900.00

ALTERNATE #1:

Use 2" x 6" WEAR DECK composite deck boards and for 2" x 6" bench construction (Barefoot Grey / Heat Reflective Technology / 25 year limited warranty) in lieu of 2" x 6" PT wood deck boards for walkway and stair decking.
(All other materials to remain as proposed above).

ADD: \$ 10,840.00

ALTERNATE #2:

Use 2" x 2" PVC composite railing pickets in lieu of the 2" x 2" PT wood pickets at the boardwalk handrail (Color to be similar to hand rail cap board.)

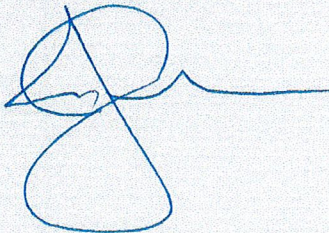
ADD: \$ 6,000.00

Total Bid Price including ALT #1: \$ 65,740.00

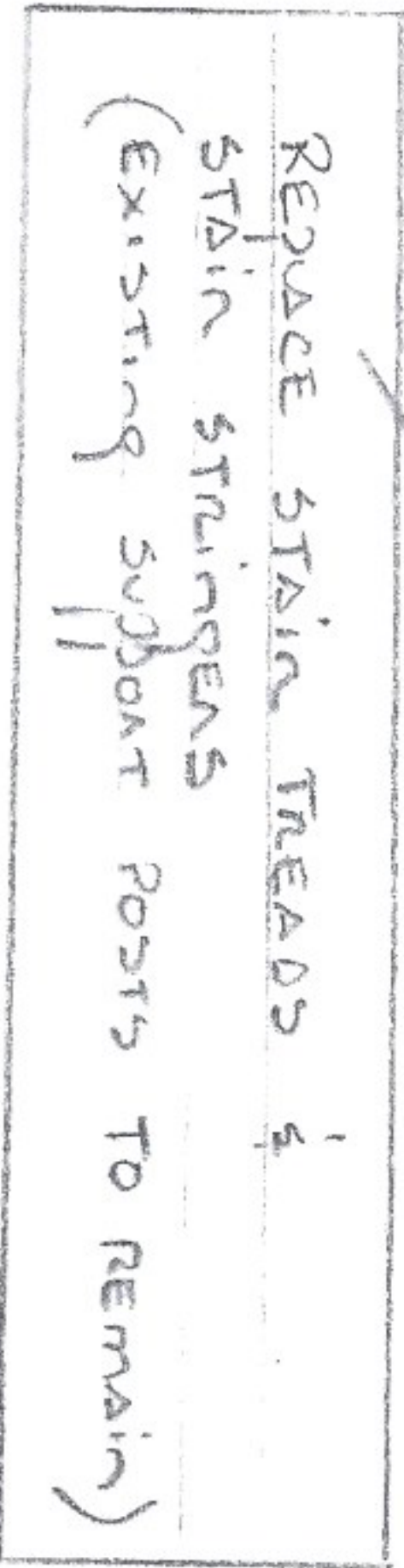
Due to on-going material fluctuations, we can only stand-behind the material pricing in this proposal for 60 days.

Respectfully,

John Wille
JMW Construction Corporation



PUBLIC BEACH DECK
TOWN OF OCEANO RINGE



ALL FASTENERS TO BE SST

- NOTES:
- ALL FASTENERS TO BE 3ST
 - REPLACE EXISTING RUSTED GALVANIZED CONNECTOR THRU-BOLTS W/ NEW 3ST BOLTS / NUTS / WASHERS

EXISTING RT POSTS $\frac{1}{2}$
2 X SUB-FRAMING TO REMAIN
REPAIR / REPLACE DAMAGED OR
ROTTED PIECES AS NECESSARY (TYP)

Repace Bench Framing

REPLACE STAIN THREADS &
STAIN STRINGERS
(EXISTING SUBFLOOT POSTS TO REMAIN)

DECK TO BE REDUCED

Reverse Handrail Framing
(Both sides of Deck)

PT POSTS TO REMAIN

Handrail:
2" x 6" PT upper + lower
2" x 2" PT Rickets
PT posts to remain

2" x 6" PT DECKING (TYP)

10-6
+ 15
RISERS

John M. Wille



JMW Construction Corp.

CGC025814

4163 Artesa Drive

Boynton Beach, FL 33436

(561) 752-0480

jmw_cc@bellouth.net

**TOWN OF OCEAN RIDGE STANDARD ADDENDUM
(Porter Street Crossover Project)**

This Addendum is made as of the _____ day of _____, 2022, by and between the **Town of Ocean Ridge**, a Florida municipal corporation ("Town" or "Customer") and **Benchmark Painting & Carpentry, Inc.**, a Florida corporation ("Benchmark").

In consideration of the mutual promises contained in this Addendum and contained within Benchmark's, proposal which is attached hereto as **Exhibit "A"** (with this Addendum and Benchmark's proposal hereafter jointly referred to as the "Contract Documents"), the Town and Benchmark agree as follows:

SECTION 1 – PAYMENTS

1.1 Payments shall be made by the Town to Benchmark within thirty (30) days of receipt of proper invoice or be subject to interest at the rate of 1% per month from thirty (30) days after the due date, in accordance with the Local Government Prompt Payment Act, Section 218.70, et seq, Florida Statutes.

SECTION 2 – INSURANCE, INDEMNIFICATION, AND RISK OF LOSS

2.1 Prior to commencing any services, Benchmark shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the Town's Town Manager and Benchmark. All such insurance policies may not be modified or terminated without the express written authorization of the Town's Town Manager.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent PRS, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability shall name the Town as an additional insured on a primary, non-contributing basis and proof of all insurance coverage shall be furnished to the Town by way of an endorsement to same or certificate of insurance prior to the provision of services. Failure to comply with the foregoing requirements shall not relieve Benchmark of its liability and obligations under the Contract Documents.

2.2 Benchmark, its officers, employees and agents shall indemnify and hold harmless the Town, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, of Benchmark, its officers, directors, employees, representatives and agents employed or utilized by Benchmark in the performance of the services under the Contract Documents. The Town agrees to be responsible for its own negligence. Nothing contained in the Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against the Town nor shall the Contract Documents be construed as a waiver of sovereign immunity by the Town.

**SECTION 3 – CONTROLLING LAW; VENUE; REMEDIES; ENFORCEMENT COSTS; JURY
TRIAL WAIVER**

3.1 The Contract Documents shall be governed by the laws of the State of Florida. Any and all legal action, including mediation, necessary to enforce the Contract Documents will be held in Palm Beach County, Florida.

3.2 If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees. Each party also agrees to waive any and all rights to a trial by jury for any and all disputes or claims which may be related to or arise out of the Contract Documents.

SECTION 4 - AUTHORITY TO PRACTICE

4.1 Benchmark represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner and in conformance with all applicable laws. Proof of such licenses and approvals shall be submitted to the Town upon request.

SECTION 5 - PUBLIC ENTITY CRIMES, SCRUTINIZED COMPANIES, AND E-VERIFY

5.1 As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Contract Documents, Benchmark certifies that it, its affiliates, suppliers, subcontractors and any other contractors who will perform hereunder, have not been placed on the convicted Benchmark list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

5.2 As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into the Contract Documents, Benchmark certifies that it is not participating in a boycott of Israel. The Town and Benchmark agree that the Town will have the right to terminate the Contract Documents if Benchmark is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.3 Benchmark shall comply with the E-Verify requirements of section 448.095, Florida Statutes, to the extent applicable.

SECTION 6 - ENTIRETY OF CONTRACTUAL AGREEMENT

6.1 The Town and Benchmark agree that this Addendum and the other Contract Documents set forth the entire contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the Contract Documents may be added to, modified, superseded or otherwise altered by Benchmark, except by written instrument executed by both parties hereto.

SECTION 7 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

7.1 The contract between the parties consists of this Addendum and the remaining Contract Documents. To the extent that there exists a conflict between this Addendum and the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of this Addendum shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 8 –PALM BEACH COUNTY IG

8.1 In accordance with Palm Beach County ordinance number 2011-009, this Addendum and the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Benchmark should review Palm Beach County ordinance number 2011-009 in order to be aware of its rights and/or obligations under such ordinance and as applicable.

SECTION 9 – INDEPENDENT CONTRACTOR

9.1 Benchmark is, and shall be, in the performance of all services under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the Town. All persons engaged in any of the services performed pursuant to the Contract Documents shall at all times, and in all places, be an employee of Benchmark and shall have no claim under the Contract Documents for compensation of any kind from the Town under the Contract Documents or otherwise. Benchmark shall be solely responsible for any and all compensation or payment to all persons engaged in any services performed pursuant to the

Contract Documents on behalf of Benchmark including, but not limited to, all wages, benefits and payroll taxes.

SECTION 10 – PUBLIC RECORDS LAW

10.1 Public Records: Benchmark shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes (the “Public Records Act”), and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the Town to perform the services.
- b. Upon request from the Town’s custodian of public records or designee, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract Documents following completion of the Contract Documents if the Benchmark does not transfer the records to the Town.
- d. Upon completion of the Contract Documents, transfer, at no cost, to the Town all public records in possession of Benchmark or keep and maintain public records required by the Town to perform the service. If Benchmark transfers all public records to the Town upon completion of the Contract Documents, Benchmark shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Benchmark keeps and maintains public records upon completion of the Contract Documents, Benchmark shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town’s custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

IF BENCHMARK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BENCHMARK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT DOCUMENTS, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE TOWN OF OCEAN RIDGE, ATTN: TOWN CLERK AT (561) 732-2635, KARMSTRONG@OCEANRIDGEFLORIDA.COM, 6450 N. OCEAN BLVD., OCEAN RIDGE, FL 33435.

SECTION 11 – NOTICES

11.1 NOTICE. All notices required under the Contract Documents shall be served by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the Town shall be sent to:

Town of Ocean Ridge
Attn: Town Manager
6450 N. Ocean Blvd.
Ocean Ridge, FL 33435

and if sent to Benchmark, shall be sent to:

Benchmark Painting & Carpentry, Inc.
1726 Corporate Drive
Boynton Beach, FL 33426

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 12 – NO CONSEQUENTIAL DAMAGES

12.1 In no event shall either party be liable to the other party for any incidental, special, indirect, consequential, or punitive damages arising out of or related to the Contract Documents, whether such alleged damages are labeled in tort, contract, or otherwise, and even if the other party has been advised of the possibility of such damages.

SECTION 13 – FORCE MAJEURE AND TERMINATION

13.1 Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The Town or Benchmark may suspend its performance under the Contract Documents as a result of a force majeure event without being in default of the Contract Documents, but upon the removal of such force majeure event, the Town or Benchmark shall resume its performance as soon as is reasonably possible. The Town or Benchmark shall provide prompt written notice to the other party upon an event of force majeure.

13.2 Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of the Contract Documents. The party electing to terminate this Agreement for breach shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have ten (10) business days from the date of the notice in which to remedy the breach. If such corrective action is not taken within ten (10) business days, then the Contract Documents shall terminate at the end of the ten (10) business day period without further notice or demand.

13.3 If the Contract Documents are terminated before the completion of all services by either party, Benchmark shall stop services on the date and to the extent specified and transfer all work in progress, completed work, and other purchased materials related to the terminated services to the Town.

13.4 Termination of the Contract Documents shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination

SECTION 14 - EXECUTION AND EFFECTIVENESS

14.1 The Contract Documents may be executed digitally or electronically by the parties and such execution will serve as and have the same effect as an original signature.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Addendum (Porter Street Crossover Project) to be executed as of the day and year set forth above.

TOWN OF OCEAN RIDGE

ATTEST:

By: _____
Karla Armstrong, Town Clerk

By: _____
Tracey Stevens, Town Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Christy Goddeau, Town Attorney

**BENCHMARK PAINTING & CARPENTRY,
INC.**

By: _____

Print Name: _____

Print Position: _____

[CORPORATE SEAL]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this ____ day of _____ 2022, by _____, as the _____ [title] of _____ Benchmark Painting & Carpentry, Inc., who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind Benchmark Painting & Carpentry, Inc., to the same.

Notary Public Signature
Notary Seal:

EXHIBIT “A”

Benchmark’s Proposal (6 pages total)

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Town Manager, Tracey Stevens

Meeting Date: June 6, 2022
Subject: Ocean Ave Sidewalk Repair

Mayor & Commissioners:

An Agreement exists between the Town and FDOT in reference to the brick paver sidewalk along Ocean Avenue in which the brick pavers are maintained by the Town. The 2001 agreement was associated with the FDOT Ocean Avenue Bridge and Road Improvements Project.

The sidewalks along Ocean Avenue west of North Ocean Blvd and east of the Bridge are in need of repairs. The sidewalk appears to have gaps between the brick pavers throughout the road and gaps between the concrete and pavers along the bridge approach, which can cause potential tripping hazards. In order to provide the proper ADA and FDOT requirements, the brick pavers will be removed and reset. As opposed to impacting the curbing, FDOT recommends removing certain areas of brick along with the sand underneath and slope the bricks to meet the curbing area that has settled. This adjustment is a maintenance repair, and no permit is required by FDOT as originally planned. The budget for this item was approved at \$50,000 in the current budget year, as we expected to need permitting through FDOT.

The only quote we have been able to obtain is from Hartzell Construction in the amount of \$27,025.71. Public Works tried to receive quotes from several contractors, and they appear to be too busy to give us a quote.

Due to inflation from the effects of the COVID-19 pandemic, prices are increasing at a fast pace and construction materials are in short supply. Due to that, staff recommends the Town Commission utilize the best interest acquisition provision in the Town Code and to move forward with the quote that was received from Hartzell Construction in the amount of \$27,025.71 to complete this work.

Town Code Section 2-217 (b)(12) Best interest acquisitions. The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes, as set forth in this code or the town's purchasing policy, where the town commission declares by at least a four-fifths affirmative vote that the sealed competitive method or obtaining written quotes is not in the best interest of the town. The town commission shall make specific factual findings that support its determination, and such contracts shall be placed on the regular town commission agenda.

Respectfully,



Tracey L. Stevens, Town Manager & Finance Director



PROPOSAL
Date: 05/19/2022
Estimate Code: 2109530

HARTZELL CONSTRUCTION

3195 N. Powerline Rd. Suite 100
Pompano Beach, Florida 33069
Main: (954) 957-9761
Fax: (954) 957-9766
www.myhartzell.com
CGC1531154

Client	Job Site
William Armstrong Town of Ocean Ridge 6450 N. Ocean Blvd. Ocean Ridge, FL 33435	19 East Ocean Avenue. Ocean Ridge, FL 33435

PROJECT MANAGER
Bill Butzbach

EMAIL
bill@myhartzell.com

Scope

Walkway Paver Repairs Due to Sinking, Shifting and Root Intrusion.

1. Remove existing sunken, lifted, shifted pavers of walkways as needed. (See attached list with sq. ft.)
2. Remove roots as needed.
3. Supply and install fill as needed.
4. Grade and compact sub-floor.
5. Install setting sand and level accordingly.
6. Re-install existing pavers accordingly.
7. Supply extra pavers as needed for cuts (New pavers to match existing color as close as possible)
8. Apply fine sand and broom into joints.
9. Remove any related debris from site.

Location.

sq. ft.

Ocean Avenue South Side.

- | | |
|---|----------------------------------|
| 1. 2nd light pole East of bridge | 36'x 5' = 180 sq. ft. |
| 2. 2 areas between 2nd light pole & catch basin | 102'x 5' & 40'x 5' = 710 sq. ft. |
| 3. @ Catch basin | 4'x 2' = 8 sq. ft. |
| 4. @ Empty lot | 1'x 1' = 1 sq. ft. |
| 5. @ First house #19 | 8'x 5' = 40 sq. ft. |
| 6. @ Fire hydrant | 5'x 5' = 25 sq. ft. |
| 7. @ Front of house #11 | 6'x 5' & 3'x 5' = 45 sq. ft. |
| 8. @ Front of house #1 | 7'x 5' = 35 sq. ft. |
| 9. @ S.E. corner of Ocean Ave & A1A | 35'x 4' & 4'x 2' = 148 sq. ft. |

Ocean Avenue North Side.

POWERED BY PROEST



PROPOSAL
Date: 05/19/2022
Estimate Code: 2109530

1. @ N.E. corner of Ocean Ave & A1A
2. @ House # 12
3. @ House # 14
4. @ Fire hydrant
5. @ House # 16
6. @ Empty lot
7. From catch basin toward bridge
8. @ Bridge & paver walkway

- 16'x 8' & 6'x 2' = 140 sq. ft.
6'x 2' = 12 sq. ft.
5'x 2' = 10 sq. ft.
4'x 5' = 20 sq. ft.
5'x 5' & 8'x 5' = 65 sq. ft.
6'x 5' & 9'x 5' & 7'x 5' = 110 sq. ft.
38'x 2' & 63'x 5' & 32'x 5' = 551 sq. ft.
1'x 2' = 2 sq. ft.

Note: All debris will be removed from premises.

Note: Any extra work not presented on this proposal will be charged accordingly.

Note: We will not be responsible for any landscape damage/replacement.

Note: We will not be responsible for sprinkler, irrigation, or asphalt damage/replacement.

Description	Total Estimate
Walkway Paver Repairs	27,025.71
Totals	\$27,025.71

- 1) Permit, Engineering, Architectural, and procurement fees, if required, billed as actual.
 - This proposal does not include the cost of permit fees, inspection fees or impact fees that may be required from the various agencies or municipalities having jurisdiction.
 - If a permit is required additional costs may be incurred, therefore Hartzell Construction, Inc. reserves the right to revise this proposal.
 - Hartzell Construction, Inc. is responsible for the completion of work in compliance with contract documents and the quality of material and workmanship following standard specifications.
 - 2) The price used in this proposal is based on the condition that all work quoted herein will be accepted in total.
 - 3) Hartzell Construction, Inc. is a financially responsible company through which the work will be performed.
 - 4) Regarding change orders, the contractor may accept a "change order" to the plans, specifications or equipment. Any additional work shall be considered as a "change order". The total price may be increased or decreased to reflect the change, and the same shall be in writing and signed by the Owner and Contractor. Any increase in the contract price shall be paid by the Owner upon ordering the work called for in such a "change order" or upon execution of the change order as required by the contractor.
 - 5) Labor and material, as specified, shall be guaranteed for one year from the date of completion.
 - 6) The customer, agent, or Management Company to supply electricity and water.
 - 7) Hartzell Construction, Inc. reserves the right to amend this proposal based on reviewing the architectural and engineering plans, once the applicable governing authority approves them.
 - 8) The customer, agent, or Management Company shall designate a staging area for onsite storage containers, dumpsters, cement trucks, and equipment, if necessary.
 - 9) Hartzell Construction, Inc. shall schedule work so that the customer, agent or management company can notify the residents before construction, these areas will need to be cordoned off during construction.
 - 10) If the owner or his/her agent requires naming an additional insured, besides the names listed on the contract, the cost to do so shall be \$ 250.00.
 - 11) The customer, agent or management company will be responsible for trimming and/or removing all foliage, sprinklers, and sod obstructing the work areas, therefore, permitting access and its replacement.
 - 12) The following items are excluded unless specified: all plumbing fixtures, all lighting fixtures, flooring, wall tile, Painting, cabinetry, vanity, countertops, interior trim to be provided by others & installed by others
 - 13) Unless specified on the contract, this proposal does not include the removal of all debris from premises.
 - 14) The contractor will not be responsible for any defacing of the fresh concrete caused by others.
 - 15) The contractor will maintain a clean job site and operate accordingly, this is restricted to the construction site area designated.
 - 16) All work to be completed in a workmanlike manner according to standard practices.
 - 17) All agreements are contingent upon strikes, accidents or delays beyond our control.
 - 18) This proposal is subject to acceptance within 10 days and void thereafter at the option of the undersigned.
- PAYMENT TERMS**

A 30% deposit is required for all items chosen along with the signed

A 30% deposit at the arrival of material and commencement of work.

A 30% deposit at substantial work completion.

A 10% Final payment after completion.

The term "Final Completion" as used in this Agreement shall mean where the Association is satisfied that the work has been completed, any applicable the municipality has given its final approval and Hartzell's other obligations have been fulfilled.

POWERED BY PROEST



PROPOSAL
Date: 05/19/2022
Estimate Code: 2109530

The undersigned, jointly and severally, absolutely guarantees the full and prompt payment of any and every indebtedness, liability or obligation, which arises out of this Contract/Invoice. All payments for goods and services rendered are due upon receipt of invoice(s). Any invoice not paid within thirty (30) days shall be subject to interest at 1.50% per month. In the event of default in payment (those not paid within forty-five (45) days) of any amount due hereunder, the undersigned promises to pay the full amount of such indebtedness. The liability of the undersigned shall not be affected by the discharge or release of the indebtedness, liability or obligation of anyone else, which arises out of this Contract/Invoice.

WAIVER AND RELEASE FOR ADVERTISING PURPOSE

Hartzell Construction, Inc. ("Hartzell Construction") may create a video that includes your employer ("Company") and/or you, describing the Company's promotion and/or use of Hartzell Construction products and/or services. The purpose of this waiver is to inform you, the undersigned, of Hartzell Construction's intended use of the video or testimonial advertisement, and to give Hartzell Construction permission to use your name, images and other identifying information contained within, in whole or in part, in sales and marketing activities relating to Hartzell Construction products and/or services. Hartzell Construction and you agree as follows:

1. You agree to participate in the preparation of, and consent to Hartzell Construction publication of, a video promoting Hartzell Construction products and/or services. You understand that you will receive no payment for your participation in the video. The video may include your name, quotations, images, and comments. The following terms will apply to the video:

a. Hartzell Construction may interview you for the video.

b. Hartzell Construction may record you by any means including, without limitation, electronic recording, film, videotape, audiotape and/or photography.

c. Hartzell Construction may display your name and image in the video, as agreed to by you or as allowable by law.

d. Hartzell Construction will own all copyrights to the video.

2. Hartzell Construction will have the right to use, reference and display the final video regarding Hartzell Construction products and/or services as follows: (i) by publication on Hartzell Construction internal and public websites; (ii) by publication in any and all media now or hereafter known, including, without limitation, television, cable, satellite transmission, film, videotapes, motion pictures, audio recordings, photographs, print publications, merchandising, the Internet and the World Wide Web. (iii) in printed and videotaped copies distributed to Hartzell Construction employees and customers; (iv) in printed and videotaped copies distributed at Hartzell Construction sponsored or co-sponsored events; (v) in unedited excerpts included in speeches, slides, brochures, and other marketing collateral materials; and (vi) as a reference when communicating with analysts, the press and the general public.

3. Each party warrants that it/he/she has the legal authority to enter into this Agreement, and that no rights granted in this Agreement violate the rights of any other person or entity. Except for the foregoing warranty, each party agrees to release the other party and its contractors, agents, and employees, from any claims relating to the use of the material that the releasing party provides and which is included in the video, so long as such use is in accordance with the rights granted under this Agreement.

Client Acceptance

Signature _____ Date _____

Hartzell Construction Acceptance

Signature _____ Date _____

POWERED BY PROEST

**TOWN OF OCEAN RIDGE STANDARD ADDENDUM
(Porter Street Crossover Project)**

This Addendum is made as of the _____ day of _____, 2022, by and between the **Town of Ocean Ridge**, a Florida municipal corporation ("Town" or "Customer") and **Benchmark Painting & Carpentry, Inc.**, a Florida corporation ("Benchmark").

In consideration of the mutual promises contained in this Addendum and contained within Benchmark's, proposal which is attached hereto as **Exhibit "A"** (with this Addendum and Benchmark's proposal hereafter jointly referred to as the "Contract Documents"), the Town and Benchmark agree as follows:

SECTION 1 – PAYMENTS

1.1 Payments shall be made by the Town to Benchmark within thirty (30) days of receipt of proper invoice or be subject to interest at the rate of 1% per month from thirty (30) days after the due date, in accordance with the Local Government Prompt Payment Act, Section 218.70, et seq, Florida Statutes.

SECTION 2 – INSURANCE, INDEMNIFICATION, AND RISK OF LOSS

2.1 Prior to commencing any services, Benchmark shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the Town's Town Manager and Benchmark. All such insurance policies may not be modified or terminated without the express written authorization of the Town's Town Manager.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent PRS, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability shall name the Town as an additional insured on a primary, non-contributing basis and proof of all insurance coverage shall be furnished to the Town by way of an endorsement to same or certificate of insurance prior to the provision of services. Failure to comply with the foregoing requirements shall not relieve Benchmark of its liability and obligations under the Contract Documents.

2.2 Benchmark, its officers, employees and agents shall indemnify and hold harmless the Town, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, of Benchmark, its officers, directors, employees, representatives and agents employed or utilized by Benchmark in the performance of the services under the Contract Documents. The Town agrees to be responsible for its own negligence. Nothing contained in the Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against the Town nor shall the Contract Documents be construed as a waiver of sovereign immunity by the Town.

**SECTION 3 – CONTROLLING LAW; VENUE; REMEDIES; ENFORCEMENT COSTS; JURY
TRIAL WAIVER**

3.1 The Contract Documents shall be governed by the laws of the State of Florida. Any and all legal action, including mediation, necessary to enforce the Contract Documents will be held in Palm Beach County, Florida.

3.2 If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees. Each party also agrees to waive any and all rights to a trial by jury for any and all disputes or claims which may be related to or arise out of the Contract Documents.

SECTION 4 - AUTHORITY TO PRACTICE

4.1 Benchmark represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner and in conformance with all applicable laws. Proof of such licenses and approvals shall be submitted to the Town upon request.

SECTION 5 - PUBLIC ENTITY CRIMES, SCRUTINIZED COMPANIES, AND E-VERIFY

5.1 As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Contract Documents, Benchmark certifies that it, its affiliates, suppliers, subcontractors and any other contractors who will perform hereunder, have not been placed on the convicted Benchmark list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

5.2 As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into the Contract Documents, Benchmark certifies that it is not participating in a boycott of Israel. The Town and Benchmark agree that the Town will have the right to terminate the Contract Documents if Benchmark is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.3 Benchmark shall comply with the E-Verify requirements of section 448.095, Florida Statutes, to the extent applicable.

SECTION 6 - ENTIRETY OF CONTRACTUAL AGREEMENT

6.1 The Town and Benchmark agree that this Addendum and the other Contract Documents set forth the entire contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the Contract Documents may be added to, modified, superseded or otherwise altered by Benchmark, except by written instrument executed by both parties hereto.

SECTION 7 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

7.1 The contract between the parties consists of this Addendum and the remaining Contract Documents. To the extent that there exists a conflict between this Addendum and the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of this Addendum shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 8 –PALM BEACH COUNTY IG

8.1 In accordance with Palm Beach County ordinance number 2011-009, this Addendum and the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Benchmark should review Palm Beach County ordinance number 2011-009 in order to be aware of its rights and/or obligations under such ordinance and as applicable.

SECTION 9 – INDEPENDENT CONTRACTOR

9.1 Benchmark is, and shall be, in the performance of all services under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the Town. All persons engaged in any of the services performed pursuant to the Contract Documents shall at all times, and in all places, be an employee of Benchmark and shall have no claim under the Contract Documents for compensation of any kind from the Town under the Contract Documents or otherwise. Benchmark shall be solely responsible for any and all compensation or payment to all persons engaged in any services performed pursuant to the

Contract Documents on behalf of Benchmark including, but not limited to, all wages, benefits and payroll taxes.

SECTION 10 – PUBLIC RECORDS LAW

10.1 Public Records: Benchmark shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes (the “Public Records Act”), and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the Town to perform the services.
- b. Upon request from the Town’s custodian of public records or designee, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract Documents following completion of the Contract Documents if the Benchmark does not transfer the records to the Town.
- d. Upon completion of the Contract Documents, transfer, at no cost, to the Town all public records in possession of Benchmark or keep and maintain public records required by the Town to perform the service. If Benchmark transfers all public records to the Town upon completion of the Contract Documents, Benchmark shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Benchmark keeps and maintains public records upon completion of the Contract Documents, Benchmark shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town’s custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

IF BENCHMARK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BENCHMARK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT DOCUMENTS, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE TOWN OF OCEAN RIDGE, ATTN: TOWN CLERK AT (561) 732-2635, KARMSTRONG@OCEANRIDGEFLORIDA.COM, 6450 N. OCEAN BLVD., OCEAN RIDGE, FL 33435.

SECTION 11 – NOTICES

11.1 NOTICE. All notices required under the Contract Documents shall be served by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the Town shall be sent to:

Town of Ocean Ridge
Attn: Town Manager
6450 N. Ocean Blvd.
Ocean Ridge, FL 33435

and if sent to Benchmark, shall be sent to:

Benchmark Painting & Carpentry, Inc.
1726 Corporate Drive
Boynton Beach, FL 33426

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 12 – NO CONSEQUENTIAL DAMAGES

12.1 In no event shall either party be liable to the other party for any incidental, special, indirect, consequential, or punitive damages arising out of or related to the Contract Documents, whether such alleged damages are labeled in tort, contract, or otherwise, and even if the other party has been advised of the possibility of such damages.

SECTION 13 – FORCE MAJEURE AND TERMINATION

13.1 Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The Town or Benchmark may suspend its performance under the Contract Documents as a result of a force majeure event without being in default of the Contract Documents, but upon the removal of such force majeure event, the Town or Benchmark shall resume its performance as soon as is reasonably possible. The Town or Benchmark shall provide prompt written notice to the other party upon an event of force majeure.

13.2 Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of the Contract Documents. The party electing to terminate this Agreement for breach shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have ten (10) business days from the date of the notice in which to remedy the breach. If such corrective action is not taken within ten (10) business days, then the Contract Documents shall terminate at the end of the ten (10) business day period without further notice or demand.

13.3 If the Contract Documents are terminated before the completion of all services by either party, Benchmark shall stop services on the date and to the extent specified and transfer all work in progress, completed work, and other purchased materials related to the terminated services to the Town.

13.4 Termination of the Contract Documents shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination

SECTION 14 - EXECUTION AND EFFECTIVENESS

14.1 The Contract Documents may be executed digitally or electronically by the parties and such execution will serve as and have the same effect as an original signature.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Addendum (Porter Street Crossover Project) to be executed as of the day and year set forth above.

TOWN OF OCEAN RIDGE

ATTEST:

By: _____
Karla Armstrong, Town Clerk

By: _____
Tracey Stevens, Town Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Christy Goddeau, Town Attorney

**BENCHMARK PAINTING & CARPENTRY,
INC.**

By: _____

Print Name: _____

Print Position: _____

[CORPORATE SEAL]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this ____ day of _____ 2022, by _____, as the _____ [title] of _____ Benchmark Painting & Carpentry, Inc., who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind Benchmark Painting & Carpentry, Inc., to the same.

Notary Public Signature

Notary Seal:

EXHIBIT “A”

Benchmark’s Proposal (6 pages total)

Date: May 17, 2022

To: Honorable Mayor and Commissioners

From: Planning and Zoning Commission

Re: Report of the May 16, 2022, Planning & Zoning Commission Meeting

The Planning & Zoning Commission reviewed the following at its May 16, 2022. The members present for the meeting were:

All regular members were present except Vice Chair Carey. We were not able to get an alternate for this meeting.

Public Comment:

None

Approval of Minutes:

1. The minutes of April 18, 2022 were approved with a minor correction.

Discussion / Action Items:

2. Selection of Chair and Vice Chair
 - Per the ballots, re-appointed Mark Marsh to serve as Chair.
 - Per the ballots, re-appointed Ric Carey to serve as Vice Chair.
3. Discussion Regarding Flat Roofs
 - Town Attorney asked clarifying questions on the proposed ordinance to extend front elevation architectural requirements to all elevations and to allow flat roofs.
 - Issue: Whether all accessory structures should have the mandatory architectural requirements or if an exception should be made for sheds (e.g., sheds that are 100 square feet or less)
 - Consensus: Sheds that are 100 square feet or less should be exempted from the architectural requirements on all elevations.
 - Issue: Removal of all “flat roof areas” for pitched roofs.
 - Consensus: Flat Roof Area for recreational use would be allowed on the second floor (above first floor only) for pitched and flat roof homes.
 - Member Hennigan will continue to work with staff on a sliding scale where the maximum allowed flat roof area for recreational use will decrease based on the lot size.
 - Only internal access will be allowed to the recreational use of the flat roof area.
 - A parapet of 36” will be allowed for the recreational use flat roof portion on the second floor.
 - Issue: Confirm for drafting the maximum height for tie-beams based on roof types
 - Consensus: Tie beam information was confirmed.
4. Ordinance Review: Administrative Variance Procedure for Grandfathered Structures
 - The Commission approved the ordinance to proceed to the Town Commission with the following changes:
 - Math verbiage to be changed to be consistent with the example.
 - Minor verbiage changes to match the example.

- The drawing example to be changed to show what would not be permitted as well.
- 5. Discussion Regarding the Impacts of Enclosed Porches on Maximum Floor Area Ratio (FAR) Calculations
 - The Commission directed staff to start a text amendment that would change the definition for what is included in the Floor Area Ratio (FAR), so that any structure with a hard permanent roof will be included in the FAR.
- 6. Review of Development Plan Review Calculations
 - The Town's Zoning Official went over what he reviews when determining his calculations in reference to development plan review applications.
 - There was directive for the Zoning Official to work with applicants to ensure that they are calculating within a 100 sq. ft. margin. He will also be present at the next Development Plan Review hearing to address any calculation concerns.

Commissioner Comments:

- Chair Marsh thanked previous Alternate Member, Britt Flanagan, for her service, and welcomed newly appointed Alternate member, Robert Rodriguez.
- Chair Marsh will be liaison for the Town Commission in June if Vice Chair Carey is unable to make it.

Town of Ocean Ridge, Florida**Town Commission Agenda Memorandum****Office of the Town Manager, Tracey Stevens**

Meeting Date: June 6, 2022
Subject: Town Manager's Report

Mayor, Commissioners & Residents of Ocean Ridge:

I was recently elected by my peers to serve as a Director on the Palm Beach County Chapter of the Florida Government Finance Officers' Association. We are currently working on additional training opportunities for Government Finance Professionals in the County to earn continuing education credits toward certification. We will be meeting with the Palm Beach County Property Appraiser at our next meeting, and will receive the preliminary valuations for budgeting purposes.

In the month of May, we celebrated the employee anniversaries of our Town Clerk, Karla Armstrong, who has served the Town for the past 5 years, and our Public Works I employee, Chad Armstrong, who has served the Town for 2 years. We thank them for their service and dedication to the Town of Ocean Ridge!

Approximately two weeks ago, the Town was the subject of a check fraud case in the amount of \$29,100. This incident involved several pieces of US Mail that were actually hand delivered to the mail carrier, leading us to believe that the compromise took place within the postal service system. Since that time, the Police Department has seen an increase in mail related thefts from residential mailboxes. These thefts are now related to bank account take overs and check washing activities. These illegal activities involve a person stealing checks from the mail and altering the check amount and payee before cashing them. Due to the increase in these types of crimes, which are happening all over the county, we urge our residents to take immediate action to prevent this from happening. If the Police Department's theory of postal compromise is accurate and it is an inside job within the postal service, nothing you do will protect your mail from compromise. However, we have also seen a recent increase in cases that involve thefts from residential mailboxes. In order to limit these types of thefts from taking place, and to assist the Police Department with its ongoing criminal investigations, we're asking that residents do the following:

- Do not leave mail in your mailbox for postal pick-up, deliver your mail to the Town Hall mailbox or to the post office directly as these areas are under video surveillance.

- Consider purchasing and installing a lockable mailbox at your home.
- Consider the installation of a new video camera that views your mailbox or relocate an existing camera (where possible).
- Work with neighbors that may be retired or work from home and ask them to collect your mail immediately upon delivery.
- Frequently check your bank accounts for suspicious activities.
- Sign up for USPS Informed Delivery
<https://informedelivery.usps.com/box/pages/intro/start.action> This service allows you to digitally preview your mail and packages which are scheduled to be delivered soon. This will help you more efficiently manage missing and stolen mail without delay so that you can take steps immediately to notify your bank or financial institution to flag your account prior to becoming a victim of fraud.

Lastly, we ask that you view your surveillance system for any recorded video from May 16, 2022 between the hours of 12:30 pm and 12:45 pm. If you locate any vehicles or suspicious activity involving your mailbox during this time, we ask you to contact the Police Department immediately.

Our federal appropriation request to Congresswoman Lois Frankel's office to fund our potable water infrastructure improvements project along A1A was not selected. The Congresswoman received many funding requests and could only select a certain number of projects for funding. The Congresswoman's staff is going to continue to search for funding on our behalf and will let us know if they find any additional funding opportunities.

Respectfully,



Tracey L. Stevens
Town Manager & Finance Director



Ocean Ridge Police Department

6450 N. Ocean Blvd., Ocean Ridge, FL 33435
Phone (561) 732-8331 • Fax (561) 732-8676
www.oceanridgeflorida.com

Richard Jones
Chief of Police

Monthly Activity Report for June 2022 Meeting

Subjects;

1. Monthly Law Enforcement Activity Report
(Please see attached detailed reports)
2. Monthly Boynton Beach Fire/EMS Activity Report
(Please see attached detailed reports)

ACTIVITY SUMMARY BY SIGNALS

ALL UNITS From 04/01/2022 00:00 Through 04/30/2022 23:59

ACTIVITY SUMMARY BY SIGNALS		All Calls IN Signal Order
Signal	Description	Count
10108	ON FOOT W/PORTABLE	117
10109	VEHICLE MAINTENANCE	278
1040	MEAL BREAK	23
1050	TRAFFIC STOP	327
1058	AT STATION	36
1060	ASSIST TO MOTORIST	5
1077	COURT	1
801	VTC PERMITS (BUILDING)	4
803	VTC OVERGROWN LOT	1
804	VTC SIGNS (ALL)	1
805	VTC SOLICIT W/O PERMIT (DOOR TO DOOR)	3
806	VTC WORKING WHEN NOT PERMITTED	9
807	VTC TRASH/GARBAGE	21
811	VTC TRAILERS	3
815	VTC PARKING ON VACANT LOT	1
816	VTC NOISE (POWER TOOLS ETC.)	1
820	VTC ANIMALS ON BEACH	9
821	VTC DOGS AT LARGE	4
823	VTC CONSTRUCTION SITE	6
824	VTC ALL OTHER	20
826	VTC OUTSIDE STORAGE	1
828	VTC TURTLE LIGHTS	1
833	VTC CUTTING NATURAL VEGETATION	1
BCHK	BEACH PATROL	93
DC	DISTRICT CHECK	995
HCKH	HOUSE CHECK HAND	160
HCKV	HOUSE CHECK VISUAL	27
IT	IT WORK	2
LSV	LOW SPEED VEHICLE	1
S01	DRUNK DRIVER	1
S02	DRUNK PEDESTRIAN	1
S04	AUTO ACCIDENT	5
S10	STOLEN VEHICLE	1

ACTIVITY SUMMARY BY SIGNALS

ALL UNITS From 04/01/2022 00:00 Through 04/30/2022 23:59

ACTIVITY SUMMARY BY SIGNALS		All Calls IN Signal Order
Signal	Description	Count
S12	RECKLESS DRIVER	2
S13	SUSPICIOUS INCIDENT	1
S13P	SUSPICIOUS PERSON	11
S13V	SUSPICIOUS VEHICLE	9
S14	INFORMATION	6
S15	SPECIAL DETAIL	35
S21C	BURGLARY CONVEYANCE	1
S21R	BURGLARY RESIDENCE	2
S22	DISTURBANCE	1
S30	THEFT	2
S31	BATTERY	2
S39	NEIGHBOR TROUBLE	1
S40	CRIMINAL MISCHIEF	1
S48	OPEN DOOR	1
S48G	OPEN GARAGE DOOR	3
S49	ALARM	14
S49F	FIRE ALARM	1
S51	TRESPASS	2
S53	EMBEZZLEMENT/FRAUD	2
S68	POLICE SERVICE CALL	26
S72	LOST/FOUND PROPERTY	6
S73	MEDICAL CALL	7
S76	ASSIST OTHER DEPARTMENT	15
S79	911 PRANK/FALSE/ACCID CALL	2
S84	WELFARE CHECK	21
S88	FLORIDA POWER LIGHT ASSIST	1
S90	ILLEGAL PARKING	19
S95	TRAFFIC INCIDENT	1
S96	PROPERTY DAMAGE	1
TC	TRAFFIC CONTROL	3

TOTAL ACTIVITY: 2358

<u>ORPD Other Activity:</u>							
Type	Total	Days-Sgt. Stang	Days-Sgt. Pilon	Nights-Sgt. Roy	Nights-Sgt. Ermeri	ACE Units	Community Standards
<u>Traffic</u>							
Citations	117	43	13	1	13	46	1
Written Warnings	214	49	19	16	31	98	1
Parking Tickets/Municipal Warnings	66	12	4	3	0	2	45
VTC's							57
Traffic Stops							118
<u>Arrests:</u>							
S19 Felony	5	1	1	1	0	2	0
S18 Misdemeanor	6	0	1	0	1	4	0
<u>Telephone Calls Handled by Dispatch:</u>							
<u>April 2022</u>	<u>Year to Date</u>						
9-1-1	28	139					
Incoming/Non-Emergency	764	2745					
Outgoing/Non-Emergency	439	1657					
PBX	360	1293					
Total:	1591	5834					
<u>Walk-Ins Handled by Dispatch:</u>							
	<u>Year to Date</u>						
All	314	1254					
After Business Hours	198	689					
Alarm Sign Issuance-	1	4					
Alarm Technician-	23	70					
AOD/Range Use-	4	6					
Burn Permit-	0	0					
Fingerprints-	0	1					
Keys-	4	12					
Pet Tag/Vehicle Decal-	7	12					
Report/Record Request-	10	40					
Vendors-	45	127					
Visitor for Chief-	10	13					
Visitor for Lt or Investigator-	6	16					
Visitor/Info-	194	737					
Gift/Food donation-	2	16					
Pick up Property/Evidence-	3	6					
Pill Drop-	5	27					

BRINY BREEZES APRIL 2022

Description	Signal	Count
ON FOOT W/PORTABLE	10108	17
BEACH PATROL	BCHK	1
EMBEZZLEMENT/FRAUD	S53	1
FIRE ALARM	S49F	1
ILLEGAL PARKING	S90	13
SUSPICIOUS VEHICLE	S13V	1
SUSPICIOUS INCIDENT	S13	1
SUSPICIOUS PERSON	S13P	2
ASSAULT/THREATS	S81	1
THEFT	S30	1
TRAFFIC STOP	1050	2
WELFARE CHECK	S84	6
TRAFFIC STOP	1050	2
POLICE SERVICE CALL	S68	2
ASSIST OTHER DEPARTMENT	S76	1
MEDICAL CALL	S73	3

Total Calls for Service	55
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District Checks	200
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Total Calls w/ DC's	255
---------------------	-----

OTHER ACTIVITY

Traffic

Citations	1
Written Warnings	0
Parking Tickets	11

APRIL 2022 BOYNTON BEACH FIRE RESCUE REPORT FOR OCEAN RIDGE & BRINY BREEZES

Incident #	Date	Full Incident Address	Incident City	Station	Shift	Incident Type Description	Response Time	Adjusted Time
2204248	4/2/2022	Palm Dr	Briny Breezes	4	A	EMS call	10.16	8.16
2204276	4/2/2022	Anna St	Ocean Ridge	1	A	EMS call	8.26	
2204295	4/3/2022	5500 Blk N Ocean Blvd	Ocean Ridge	4	B	EMS call	5.88	
2204450	4/6/2022	Sailfish Ln	Ocean Ridge	4	B	Motor vehicle accident with injuries	6.13	
2204515	4/7/2022	Island Dr S	Ocean Ridge	1	C	Alarm, no fire - unintentional	11.98	10.98
2204606	4/9/2022	6885 N Ocean Blvd	Ocean Ridge	1	B	EMS call	12.66	11.66
2204695	4/12/2022	Juniper Dr	Briny Breezes	4	A	EMS call	8.18	
2204775	4/13/2022	6450 N Ocean Blvd	Ocean Ridge	1	C	EMS call	4.25	
2204770	4/13/2022	6450 Ocean Ave	Ocean Ridge	1	C	EMS call	4.53	
2204790	4/14/2022	Hudson Ave	Ocean Ridge	4	A	EMS call	6.36	
2204809	4/14/2022	6415 N Ocean Blvd	Ocean Ridge	1	A	EMS call	7.06	
2204897	4/16/2022	Bonito Dr	Ocean Ridge	1	C	Smoke scare, odor of smoke	8.88	
2204898	4/16/2022	6300 Blk N Ocean Blvd	Ocean Ridge	1	C	Motor vehicle accident with injuries	5.85	
2204958	4/17/2022	5505 N Ocean Blvd	Ocean Ridge	4	A	EMS call	8.56	
2204992	4/18/2022	4900 Blk Old Ocean Blvd	Briny Breezes	4	B	Alarm, no fire - unintentional	9.68	
2205039	4/19/2022	6800 Blk N Ocean Blvd	Ocean Ridge	1	C	EMS call	7.61	
2205076	4/20/2022	Briny Breezes Blvd	Briny Breezes	4	A	Medical assist	6.28	
2205081	4/20/2022	6450 N Ocean Blvd	Ocean Ridge	4	A	EMS call	7.45	
2205249	4/24/2022	N Ocean Blvd	Briny Breezes	4	B	EMS call	6.03	
2205302	4/25/2022	6660 N Ocean Blvd	Ocean Ridge	1	C	EMS call	8.22	
2205334	4/26/2022	Sabal Island Dr	Ocean Ridge	1	A	EMS call	11.96	9.96

APRIL 2022 BOYNTON BEACH FIRE RESCUE REPORT FOR OCEAN RIDGE & BRINY BREEZES

2205374	4/27/2022	5600 Blk N Ocean Blvd	Ocean Ridge	4	B	Alarm, no fire - unintentional	6.13	
2205451	4/29/2022	6600 Blk N Ocean Blvd	Ocean Ridge	1	A	EMS call	12.50	8.50
Ocean Ridge Summary					Briny Breezes Summary			
Medical Calls		15			Medical Calls		4	
Fire/Other Calls		3			Fire/Other Calls		1	
Total		18			Total		5	

Calls exceeding 10 minutes consists of; (4) legitimate medical emergencies, (1) non-emergency calls for service.

Upon checking details of each call including the dispatch time received and the time that Fire Rescue was notified or dispatched, I have determined that there is a Fire Rescue Dispatch delay of 1 to 5 minutes on every call. These dispatch delays are subtracted from the "Response Time" shown above and the actual response time is displayed in red as "Adjusted Time".

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum
Office of the Public Works Department

Meeting Date: June 6, 2022
Subject: Public Works Dept Report Covering May 2022

Mayor & Commissioners:

The following is a list of Public Works Projects that were completed in May 2022:

1. **Water leak at 12 Inlet Cay – worked with contractors & Building Official on repairs and code enforcement case.**
2. **New door installed at Police Department. Working with contractors on the ADA equipment installation.**
3. **Coconut trimming completed in Town rights-of-way.**
4. **Coordinating with Televac on drain cleaning of the Town prior to hurricane season.**
5. **Working with contractor for outfall cleaning prior to hurricane season.**
6. **Brought Police Department ATV to the shop for repairs.**
7. **Assisted Police Chief with picking up an aluminum pole for LPR camera.**
8. **Had 2 after hours call outs for flooding this month.**
9. **SCADA system went down, spoke with technical support to troubleshoot for repairs.**
10. **Public Works I employee attended training for NPDES certification; obtained state license.**
11. **Continued working with City of Boynton Beach on water service issues at 5516 N. Ocean Blvd. Meter scheduled to be moved on 5/24/22.**
12. **Worked with Town Engineer and FDOT on Ocean Ave sidewalk improvements plan. Contacted several contractors for quotes.**
13. **Helped Garden Club coordinate Arbor Day tree planting in Town's right of way.**
14. **Tropical Generator Replacement – Ongoing, waiting for contractor to proceed.**
15. **Working with the City of Boynton Beach on a piggyback contract for the Ocean Ave light replacement – ongoing.**
16. **Working with Building Official and Town Engineer on setback requirements for placement of new storage building.**
17. **Met with contractors regarding generator repair at Town Hall. New day tank is being made, and we are working on other issues as well.**
18. **Worked with Code Enforcement Officer on several code cases for code compliance – ongoing.**
19. **Thompson Street/Kerrigan Offsite Improvements – Project is not yet complete. Ongoing.**

20. **Storm Drain Maintenance** – Need to determine location of water infiltration from Turtle Beach to Diamond Beach. Not yet determined; need to proceed further to camera the lines as time permits. Ongoing
21. **FDOT Ponds** – Waiting for FDOT to raise berms; loss of gas tax revenue due to COVID-19 is impacting the job. Ongoing
22. **Crown Colony Crosswalk** – Town Manager worked with FPL on lighting progress. Update from FPL that the lighting work will be completed by July 1st. We are working to change the dates of the FDOT permit and coordination of the start date for the contractor which should be mid-July.
23. **Installation of Pet Stations** – Will install station at Town Hall when time permits.
24. **Flooding at Ocean & Woolbright Bridges West Side (FDOT)** - Lisa did field report; to share with Chris on both roads. Wait on Woolbright due to construction, focus on Ocean Ave. In progress.
25. **Sabal Island Beautification – Working with contractors and Sabal Island Committee.**
26. **Other Items – Work that is Performed on an Ongoing Basis**
 - Alleyway Trimming- Ongoing
 - GIS Updates – Working with Town Engineer on potable water line GIS updates. Ongoing.
 - Town Hall Pest Control Service - monthly
 - NPDES Storm Drain Reports- weekly
 - Town-wide Trash Collection (Including Beaches) – This takes approximately 2-3 hours per day on Mon, Wed & Fri
 - E.P.A Fuel Logs- monthly- fuel station
 - Generator Fuel Leak Detection- weekly checking, monthly reporting for EPA. Process takes approx. 1.5 hours per week.
 - Town Hall Fire Protection Testing for Lighting- Monthly reporting
 - Fire Hydrant Flow Testing & Repairs – Ongoing
 - Mowing, Weed Eating, Hedge Trimming of Certain Town Areas not covered by Contractor – Ongoing; completed this month.
 - Pressure Cleaning Town Hall Sidewalks – completed for FY21; will schedule for FY22 when the time comes.
 - Sand Blasting Generators & Other Structures – Town Hall completed, will schedule others as time permits.
 - Rust Tec Installation – Continue to monitor Woolbright/A1A area for rust stains; address and repair as needed.
 - Big Blue Pump Monthly start up – completed for this month
 - Monthly Fuel Order – completed for this month
 - Maintain Town Equipment – Ongoing as needed
 - Maintain 14 A/C Units at Town Hall – Ongoing
 - Light Bulb replacement – As needed
 - Storm Drain Inspection/Clearing – weekly in dry weather, more frequent during rain events. Reporting for NPDES completed during process.
 - Responded to Emergency call-outs after hours throughout the month – called out after-hours for pump alarms.
 - Street Sign Repairs/Replacement – Inspect signs, scrape & re-paint Town Signs as needed. Ongoing

- Street Sign Inventory – Town Manager directed Public Works to update/complete the street sign inventory to include condition of signs and list of signs that need repair/replacement in order of importance. Ongoing
- Dune Trimming Inspections – Ongoing as needed
- Meetings, Emails and Phone Calls with Residents – Ongoing

Respectfully,

Billy Armstrong
Public Works II

Memorandum

To:	Ocean Ridge Town Commission Tracey Stevens, Town Manager	Item #
From:	Lisa Tropepe, P.E., Town Engineer	
Subject:	Town Engineer Report Work Completed for the month of April, 2022	
Date:	May 16, 2022	

Below is a condensed version of the work that Engenuity Group, Inc. provided in the month of April. For a more detailed description with individual staff descriptions and time, please see the specific invoices listed below.

If there are any other questions or clarifications, please do not hesitate to contact me.

00020.00 Ocean Ridge General Project Number

- INV #29394– 04/30/2022 - \$7,768.00
 - **Work Order 10 – Homeowner Site Plan Reviews, observations, reporting and meetings**
 - 6849 N. Ocean Blvd- Ocean Club of FL
 - Prep for inspection
 - Field observation on 04/12 and meeting with management on permit
 - Create Field Observation report and sent
 - Thompson Street_ Kerrigan
 - Email to Redi-Rock
 - Received many emails on Whitney Way homeowner and Contractor on project status
 - Spoke to Contractor regarding project close out and looked up Engineer of record information
 - Received invoice from Contractor and notice of lien potential
 - 62 Harbour Drive N
 - Planning and Zoning Meeting
 - Email correspondences
 - Discuss in meeting for easement request
 - Easement discussion

- 5006 Old Ocean Blvd
 - Received submittal on 04/05
 - Review plans and start comment review letter
 - Discuss pool patio addition and gazebo removal
 - Email on need to go health Department
 - Owner resent Engineering plans
 - Finalize review and sent out comment letter
 - Read overturn of approval
- 8 Ridge Blvd
 - Review plans submitted on 04/01
 - Phone call
 - Review comment letter
 - Finalize review comment letter and sent
- 3 Inlet Cay Drive
 - Submittals on 04/05 and 04/21
 - Review plans and start comment review letter
 - Finalize comment review letters and sent
 - Phone call wit Vargas
 - Quick review
 - Spoke to contractor
 - Received notice from Boynton Beach Utilities
- 119 Marlin Drive
 - Development letter
- 120 Marlin Drive
 - Do some research
 - Email correspondences
 - Phone call with Durani and Bill. Research MS4 and discuss with staff
 - Meeting minutes email
 - Call with Town staff
 - Update letters
 - Easement request issues
- 126 Marlin Drive
 - Received submittal on 04/05
 - Review plans and start comment review letter
 - Finalize letter and sent
- 54 Spanish River Drive
 - Review comment letter
 - Discuss with staff

- Phone call
- Address contractor comments and spoke with contractor on same and sent out emails
- 2 Whitney Way
 - Review plans and start comment review letter
 - Review comments
 - Phone Call with applicant
- 6073 Old Ocean Blvd
 - Received submittal on 04/18
 - Preliminary review
 - Review plans and start comment review letter
 - Development Planning review
 - Discuss with staff
 - Discuss finished floor and garage elevation
 - Read over zoning comments, FAR and pervious calculations
- 21 Sabal Island Dr
 - Received submittal on 04/21
 - Review plans and start comment review letter
- 80 E. Ocean
 - Look up site
 - Discuss with staff on new review
- 24 Hudson Avenue
 - Save and print record drawing
- 18 Ocean Avenue
 - Review plans submitted 04/27
- 6107 Old Ocean
 - New review
 - Discuss revision

00020- Ocean Ridge- General Town Engineer

- INV #29448– 04/30/2022 - \$2,353.00
 - **Work Order 308 General Town Engineer (2021-2022)**
 - SCADA
 - Prepare and attend Commission meeting
 - Write up and assist grant person in getting information on needing additional funds through a grant
 - Received an email and spoke to staff on training for stormwater inspector
 - Read, revised and approved monthly Engineering report
 - Work on State Stormwater report and sent out a draft

- Add information to State Stormwater report
- Email from grant person on soft costs.
- Received email regarding utility information survey

00020.24 NPDES

- INV #29431- 04/30/2022- \$150.50
- **Work Order 22-NPDES Annual Report and Year Activities (2021-2022)**
 - Correspondence with Lisa and Bill regarding FDEP Stormwater inspector training
 - Discuss the program with Staff
 - Coordination for next year's annual NPDES report and training

00020.57 Stormwater Maintenance and Repair

- INV #29392– 04/30/2022 - \$907.50
- **Work Order 05- Fire Hydrant- Watermain**
 - Update Watermain inventory
 - Emails on Grant needs for Water System
 - Work with staff to check and revise the watermain inventory. Revised the notes and spoke to staff from the 90's about where to find the inventory
 - Reply to emails to Grant writer and evaluated inventory with concerns
 - Review watermain information for survey

00020.58 FL Department of Transportation (FDOT) Projects

- INV #29391 – 04/30/2022 - \$1,600.00
- **Work Order 02 – E. Ocean Ave Detention Areas**
 - Resent email to James Poole regarding the detention areas
 - Issue with FDOT on receiving the videos on the detention areas flooding
- **Work Order 06- Bridge Maintenance**
 - Discuss about Jurisdiction
- **Work order 07- Ocean Ave. Sidewalk Improvements**
 - Start plan sheets
 - Work with staff on plan and update before sending to Billy
 - Prep plans for site visit
 - Phone calls and email correspondences with Billy
 - Prep for site visit
 - Creating plans and scaling for in staff work
- **Work order 08- SR A1A Sidewalks**
 - Review FDOT main rating program

00020.60 Tropical Station Generator

- INV #29389 - 04/30/2022- \$977.50
- **Work Order 01- Engineering Services**
 - Discussion on next step with generator contract
 - Spoke to staff about generator award process
 - Sent out email to the contractor requesting a meeting and call Larry on his availability
 - Correspond with contractor regarding a proposed Thursday meeting and sent out meeting invite
 - Prepare list of items to address with the contractor for meeting and spoke to engineer on same
 - Pre-project meeting
 - Meeting Minutes of Pre-project meeting

00020.61 ARPA Watermain Enhancements

- INV #29317- 04/30/2022- \$2,018.50
- **Work Order 01- Survey Services**
 - Check notes
 - Review water as-builts and labeling right-of-way
 - Walk through, photos and talk to staff
 - Updating from walk-thru, checking water as-builts, checklist, owner information.
 - Plotting for review in-house and speak with staff
 - Spoke with staff on plotting markups and highlighting for crew

Monthly Total: \$15,775.00

Agenda Item #11

Date: May 23, 2022

To: Honorable Mayor and Commissioners

From: Durrani Guy, Building Official

Re: Building Department Report – June’s Commission Meeting Update

Mayor and Commissioners,

Below is a list of the Building Department’s statistics for the month of April 2022, a list of new single family home sites along with their permit issuance date, expiration date, and the date of their last inspection.

<u>BUILDING DEPARTMENT STATISTICS FOR APRIL 2022</u>	
PERMIT APPLICATIONS RECEIVED	61
PERMITS ISSUED	96
PLAN REVIEWS	49
REVISIONS	3
ROW PARKING PERMITS ISSUED	2
INSPECTIONS PERFORMED BY THE BUILDING DEPARTMENT	187
SITE VISITS BY THE BUILDING DEPARTMENT	2
STOP WORK ORDERS POSTED	2
COMMUNITY STANDARDS HEARING	1

<u>STOP WORK ORDERS FOR APRIL 2022</u>
4/4/22: 59 SPANISH RIVER DRIVE – DOCK WORK WITHOUT A PERMIT
4/5/22: 36 SPANISH RIVER DRIVE – INTERIOR WORK WITHOUT A PERMIT

<u>STATUS OF MAJOR CONSTRUCTION</u>						
<u>PERMIT #</u>	<u>ADDRESS</u>	<u>TYPE</u>	<u>ISSUED DATE</u>	<u>EXPIRATION DATE</u> *1 YR AFTER ISSUANCE *2 YRS IN RSE DISTRICT	<u>LAST INSPECTION</u>	<u>COMMENTS</u>
20358	10 HARBOUR DRIVE SOUTH	RSF	01/14/2021	07/14/2022	04/07/2022	
21612	21 OCEAN AVENUE	RSF	12/08/2021	12/08/2022	NONE	
20435	28 HUDSON AVENUE	RSF	05/21/2021	05/21/2022	05/23/2022	AWAITING RENEWAL APPLICATION
21974	29 ELEUTHERA DRIVE	RSF	10/12/2021	10/12/2022	05/17/2022	
21859	54 SPANISH RIVER DRIVE	RSF	12/09/2021	12/09/2022	05/13/2022	
16219	6273 N OCEAN BLVD	RSE	05/08/2015	05/08/2017	08/18/2021	STOP WORK ORDER
19771	7 HARBOUR DRIVE SOUTH	RSF	03/26/2020	09/10/2022	03/10/2022	
20483	82 ISLAND DRIVE SOUTH	RSF	03/18/2021	03/18/2022	05/23/2022	AWAITING RENEWAL APPLICATION
21804	95 ISLAND DRIVE SOUTH	RSF	08/20/2021	08/20/2022	05/23/2022	

PLEASE NOTE THAT THE ABOVE DATA ABOVE IS INCLUSIVE UP UNTIL MAY 23, 2022

Special Magistrate Code Enforcement Hearing
Tuesday, April 5, 2022

Fine Reduction Request Hearing
CASE NO. 2021-008

8 INLET CAY DRIVE, OCEAN RIDGE, FL 33435

RE: INLET CAY, LT 8

NATURE OF VIOLATION: VIOLATE SECTION(S) 64-77 BY
FAILURE TO OBTAIN PERMIT FOR INSTALLATION OF
FLOATING DOCK.

Town of Ocean Ridge, Florida
Town Commission Agenda Memorandum

Meeting Date: June 6, 2022
Subject: Referendum to Preserve Conservation Land

Mayor & Commissioners:

I would like to propose that the Town Attorney draft an ordinance to go to referendum that will limit the newly acquired, and all existing owned, and all future owned properties by the Town of Ocean Ridge that are designated Conservation to remain such zoning. If the town at any future point wishes to sell, rezone or otherwise do something with this or any Conservation zoned property, the Commissioners will have to ask the town residents by referendum.

Respectfully,

Martin Wiescholek
Town Commissioner