

**RESOLUTION NO. 39-10-14**

**A RESOLUTION OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF ENGAGEMENT WITH THE DISASTER DEBRIS MANAGEMENT AND SUPPORT SERVICES FIRM OF THOMPSON CONSULTING SERVICES, LLC TO ASSIST THE TOWN IN MONITORING AND REPORTING DEBRIS REMOVAL ACTIVITIES IN THE EVENT OF A HURRICANE OR DISASTER; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Lake Park, Florida (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons, pursuant to Florida Statutes; and

**WHEREAS**, the Town may require the services of a contractor to be responsible for the overall monitoring of debris collection and to ensure a compliant, well-managed and organized approach to debris collection and disposal within FEMA guidelines associated with the clearing of public property and public right-of-ways after a major hurricane or disaster; and

**WHEREAS**, the Solid Waste Authority of Palm Beach County (SWA) previously issued a Request For Proposals (RFP) in accordance with the SWA’s purchasing requirements, requesting proposals from qualified debris management and support services contractors in order to have in place a standby agreement with a company to provide timely and effective monitoring and reporting of debris collection activities after a storm event; and

**WHEREAS**, The SWA team Selection Committee thoroughly reviewed all proposals and selected a company on the basis of their low Fee Schedule; and

**WHEREAS**, the SWA awarded a contracts to Thompson Consulting Services, LLC with the condition that the contractor agrees that the Agreement constitutes an offer to all State Agencies and Political Subdivisions of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in the Agreement; and

**WHEREAS**, Town staff has recommended to the Town Commission of the Town of Lake Park, that it is in the best interest of the Town to “piggyback” off of the SWA Agreement No. 14-244, and to have in place a standby agreement with Thompson Consulting Services, LLC.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are true and correct findings of fact of the Town Commission of the Town of Lake Park, and are hereby incorporated herein by reference.

**Section 2.** Thompson Consulting Services, LLC is hereby approved by the Town Commission of the Town of Lake Park to provide Project/Operations Management, Collection Monitoring, Data Processing and Management, Debris Vehicle Certification, Damage Complaint Tracking, Data Compilation and Reporting, Payment Monitoring and Reconciliation Processing, and Reporting and Coordinating with the Town’s Project/Operations Manager, and any other related services as outlined in the Agreement. The Town reserves the right to select which specific services the Consultant will provide and to add or delete services throughout the term of the Agreement with mutual consent, and the Mayor is hereby authorized to execute a letter of engagement between the Town and Thompson Consulting Services, LLC. The Agreement shall be reviewed as to form and legal sufficiency by the Town Attorney.


**Section 3.** This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Commissioner Rapoza, who moved its adoption. The motion was seconded by Commissioner Flaherty and upon being put to a roll call vote, the vote was as follows:


	AYE	NAY
MAYOR JAMES DUBOIS	<u>/</u>	___
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	___
COMMISSIONER ERIN FLAHERTY	<u>/</u>	___
COMMISSIONER MICHAEL O'ROURKE	<u>/</u>	___
COMMISSIONER KATHLEEN RAPOZA	<u>/</u>	___

The Town Commission thereupon declared the foregoing Resolution NO. 39-10-14 duly passed and adopted this 15 day of October, 2014.


TOWN OF LAKE PARK, FLORIDA

BY:   
JAMES DUBOIS  
MAYOR

ATTEST:

  
VIVIAN MENDEZ  
TOWN CLERK  
TOWN OF LAKE PARK  
SEAL  
(TOWN SEAL)  
FLORIDA

Approved as to form and legal sufficiency:

BY:   
THOMAS J. BAIRD  
TOWN ATTORNEY



## End User Professional Services Agreement General Terms and Conditions

This **Professional Services Agreement** ("Agreement") is dated September 8, 2014, by and between **Thompson Consulting Services, LLC** (hereinafter referenced as "Consultant"), with offices at 1135 Townpark Avenue, Suite 2101, Lake Mary, FL 32746 and the Town of Lake Park (hereinafter referenced as "Client" or "End User"), a political subdivision of the State of Florida, with offices at 535 Park Avenue, Lake Park, FL 33403;

Whereas, Consultant has entered into an agreement for Disaster Debris Management and Support Services (Agreement Number 14-244) effective as of June 18, 2014 – June 17, 2017 with the Solid Waste Authority of Palm Beach County (hereinafter referred to as "Authority Contract");

Whereas, the Authority Contract acknowledges that the End User may enter into an agreement with the Consultant through the Authority Contract;

Whereas, Client desires to be an End User under the Authority Contract;

Whereas, both parties hereby agree to be bound to the terms and conditions of the Authority Contract (attached as **Exhibit A**);

Now therefore, in consideration of the mutual covenants to be performed by the parties pursuant to this Agreement, each party hereby represents, warrants, and agrees as follows:

### 1. TERM & APPLICABILITY

The term of this Agreement shall mirror the remaining term of the Authority Contract from the date of execution. This Agreement shall apply to all work performed at the request of the Client or for the benefit of the Client during the term hereof (the "Work") unless both parties agree in writing that the terms and conditions hereof shall not apply.

### 2. SCOPE OF WORK

Consultant shall perform such Work as the Client may direct from time to time during the term hereof and in accordance with **Exhibit A** attached hereto.

### 3. STANDARD OF CARE

Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced by professional consultants performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.

### 4. CHANGES/AMENDMENTS

This Agreement and its exhibits constitute the entire agreement between the Parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment signed by both Parties. The estimate of the level of effort, schedule, and payment required to complete any services directed by the Client will be dictated through a written task order executed by both parties. Consultant shall promptly notify Client if changes to the Scope of Services or any resulting task orders

affect the schedule, level of effort, or payment to Consultant and the schedule and payment shall be equitably adjusted.

### 5. FEE FOR SERVICES

The fee for the services under this Agreement will be based on the actual hours of services furnished multiplied by Consultant's Billing Rates as set forth in the Authority Contract. Consultant's rates are subject to annual Consumer Price Index (CPI) escalations on the annual anniversary of the execution date of the Agreement upon mutual written agreement by each party.

### 6. PAYMENT

Client shall pay Consultant for services furnished under this Agreement upon submission of monthly invoices. Client shall pay Consultant within thirty (30) days of receipt of invoices less any disputed amounts. If Client disputes any portion of the invoice, the undisputed portion will be paid and Consultant will be notified in writing, within ten (10) days of receipt of the invoice of the exceptions taken. Consultant and Client will attempt to resolve the payment dispute within sixty (60) days or the matter may be submitted to arbitration as provided herein. Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law) on the unpaid, undisputed invoiced amounts. Any interest charges due from Client on past due invoices are outside any amounts otherwise due under this Agreement. If Client fails to pay undisputed invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may suspend services hereunder or may initiate collections proceedings, without incurring any liability or waiving any right established hereunder or by law.

### 7. WORK PRODUCT

Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ("Work Products"); provided, however Client shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or reuse.

### 8. INFORMATION PROVIDED BY OTHERS

Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.

### 9. SAFETY AND SECURITY

Consultant has established and maintains programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for job site safety (including,



## End User Professional Services Agreement General Terms and Conditions

but not limited to, any supervision of operations of others, training, audit or observation of safety programs of others) and safety of persons other than Consultant's employees. Client acknowledges that Consultant has no responsibility under this Agreement related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security or safety.

### 10. TERMINATION

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Client shall pay Consultant for all services rendered to the date of termination plus reasonable expenses for winding down the services. If either party defaults in its obligations hereunder, the non-defaulting party, after giving thirty (30) days written notice of its intention to terminate or suspend performance under this Agreement, may, if cure of the default is not commenced and diligently continued, terminate this Agreement or suspend performance under this Agreement. Upon termination, the terms and conditions found in this Agreement concerning ongoing or future obligations and contractual responsibilities and interpretation thereof shall survive its termination, including but not limited to those obligations found in sections 3, 6, 7, 8, 11, 13 & 14.

### 11. ASSIGNMENT

This Agreement is binding upon and will inure to the benefit of Client and Consultant and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

### 12. NOTICES

Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client: Town of Lake Park, FL  
Attention: Dale S. Sugarman, Ph.D  
Address: 535 Park Ave  
Lake Park, FL  
33403

Consultant: Thompson Consulting Services, LLC  
Attention: Nate Counsell, Vice President  
Address: 1135 Townpark Avenue  
Suite 2101  
Lake Mary, FL 32746

### 13. MISCELLANEOUS

A. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.

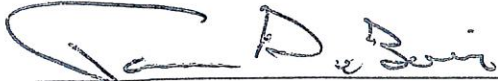
B. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.



thompson  
CONSULTING SERVICES, LLC

### End User Professional Services Agreement General Terms and Conditions

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

  
Town of Lake Park, Florida

By: James DuBois  
As its: Mayor  
Date: October 15, 2014

Address: Town of Lake Park  
535 Park Ave  
Lake Park, FL 33403

  
Thompson Consulting Services, LLC

By: Nate Counsell  
As its: Vice President  
Date: 10/31/14

Address: Thompson Consulting Services, LLC  
1135 Townpark Avenue  
Suite 2101  
Lake Mary, Florida 32746

Please return executed copy of these terms and conditions to the attention of:  
Kyle Hoyle  
(407) 792-0018 – Phone



thompson  
CONSULTING SERVICES

### End User Professional Services Agreement General Terms and Conditions

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

James DuBois

Town of Lake Park, Florida

By: James DuBois  
As its: Mayor  
Date: October 15, 2014

Address: Town of Lake Park  
535 Park Ave  
Lake Park, FL 33403

Thompson Consulting Services, LLC

By: Nate Counsell  
As its: Vice President  
Date: \_\_\_\_\_

Address: Thompson Consulting Services, LLC  
1135 Townpark Avenue  
Suite 2101  
Lake Mary, Florida 32746

Please return executed copy of these terms and conditions to the attention of:  
Kyle Hoyle  
(407) 792-0018 – Phone



thompson  
CONSULTING SERVICES

**End User Professional Services Agreement  
Authorization for Services**

**EXHIBIT A**





*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. 14-244**

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**AGREEMENT FOR PROFESSIONAL SERVICES**

*This Agreement*, between the **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**), a Delaware limited liability company, whose Federal Employer ID Number is 45-2015453:

*Whereas*, **AUTHORITY** desires to employ the services of the **CONSULTANT** for the purpose of providing disaster debris management and support services; and,

*Whereas*, **CONSULTANT** represents it is capable and prepared to provide such services.

*Now, therefore*, in consideration of the promises contained herein, the parties hereto agree as follows:

**ARTICLE 1 - EFFECTIVE DATE**

The term of this Agreement shall commence on **June 18, 2014** and shall continue until **June 17, 2017** unless otherwise terminated as provided herein. The **AUTHORITY** shall have the option of extending the Agreement until **April 17, 2021** at the same terms and conditions with approval from the **AUTHORITY'S** Governing Board. Extension of the Agreement beyond the initial period, and any option subsequently exercised, is an **AUTHORITY** prerogative, and not a right of the **CONSULTANT**. This prerogative will be exercised only when such continuation is clearly in the best interest of the **AUTHORITY**. 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 which will be referred to as Consultant Services Authorizations (**CSA**) shall each 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 in an individual **CSA**. 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 **CSA**. The **AUTHORITY**, by virtue of this Agreement, gives the **CONSULTANT** 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**

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 **CSA**. Invoices must reference the current Agreement or **CSA** number (if any).

**CONSULTANT** shall submit a monthly invoice for services rendered. Invoices shall include a statement of progress made regarding the project, a description of services rendered and a breakdown of hours spent on the project. There shall be no reimbursable expenses allowable.

Payment of invoices shall be due and payable 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, c/o Michelle Napier

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.

#### ARTICLE 4 - INSURANCE

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

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 \$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 \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.
4. **Excess Liability** Insurance with limits of not less than \$5,000,000 annual aggregate.

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.

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** written notice has been made to the AUTHORITY. CONSULTANT shall include AUTHORITY as an **additional insured** on all liability insurance policies required by the 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.

CONSULTANT'S naming of the AUTHORITY as an additional insured on all of its liability insurance policies pursuant to this Agreement shall afford coverage only for the grossly negligent and willful acts of CONSULTANT pursuant to this Agreement and is limited to the terms and conditions of indemnity provisions in the Agreement. Notwithstanding anything herein to the contrary, CONSULTANT shall in no way be responsible for the defense or indemnity of matters arising or resulting from the AUTHORITY'S negligence, errors or omissions or willful misconduct.

In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the AUTHORITY for any claim in excess of the sub-consultants insurance coverage.

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**

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a comparable professional under similar circumstances and CONSULTANT shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.

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 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**

The CONSULTANT is, and shall be, in the performance of all work services and activities 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.

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 PRACTICE**

The CONSULTANT hereby 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.

#### **ARTICLE 9 - COMPLIANCE WITH LAWS**

In performance of the Services, 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-CONSULTING**

The AUTHORITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant under this Agreement.

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**

The AUTHORITY may, by written notice of default to the CONSULTANT, terminate the Agreement in whole or in part if the CONSULTANT fails to satisfactorily perform any provisions of this Agreement, or fails to make progress so as to endanger performance under the terms and conditions of this Agreement, or provides repeated non-performance, or does not remedy 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 procure goods and/or services similar to those terminated, and the CONSULTANT shall be liable for any excess costs incurred due to this action.

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**

The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate the 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, from the entire Agreement.

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 and on the date given in the Notice of Termination. Additionally, unless directed differently, the successful CONSULTANT shall terminate outstanding orders and/or subcontracts related to the terminated work.

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.

## **ARTICLE 16 - UNCONTROLLABLE FORCES**

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, war, riot, civil disturbance, sabotage, and governmental actions.

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 nonperforming 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 – PUBLIC RECORDS**

The CONSULTANT shall comply with the applicable provisions of Chapter 119, Florida Statutes (Public Records Law) for records related to this Agreement.

## **ARTICLE 18 - 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 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 or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **ARTICLE 19 - NON-DISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.



#### **ARTICLE 20 - 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 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 subsequent default or breach.

#### **ARTICLE 21 - SEVERABILITY**

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.

The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

#### **ARTICLE 22 - ENTIRETY OF AGREEMENT**

The AUTHORITY and the CONSULTANT agree that this Agreement 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, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

#### **ARTICLE 23 - MODIFICATION**

The Agreement may not be modified unless such modifications are evidenced in writing signed by both AUTHORITY and CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both parties.

#### **ARTICLE 24 - SUCCESSORS AND ASSIGNS**

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

#### **ARTICLE 25 - 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 26 - TRUTH-IN-NEGOTIATION CERTIFICATE**

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 date of the Agreement.

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 27 - 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.

## **ARTICLE 28 - ACCESS AND AUDITS**

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 sub-grantee as required by FEMA'S 322 Public Assistance Guide, page 114, as amended, incorporated in this Agreement as Exhibit D. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit

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 State of Florida requirements.

## **ARTICLE 29 - 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 30 - 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: Mark Eyeington, Chief Operations Officer  
Office No.: 561-640-4000 Fax No.:561-640-3400 Email: [meyeington@swa.org](mailto:meyeington@swa.org)

### AS TO CONSULTANT

1135 Townpark Avenue, Suite 2101  
Lake Mary, FL 32746  
Attention: Nathaniel Counsell, Vice President  
Office No.: 407-792-0018 Cell No.: 407-619-2781 Email: [ncounsell@thompsoncs.net](mailto: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 31 - CONTRACT ADMINISTRATION

Services of CONSULTANT shall be under the general direction of Mark Eyeington, Chief Operations Officer, or his or her successor, who shall act as the AUTHORITY'S representative during the term of the Agreement.

## ARTICLE 32 - 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 M. Hoyle, President  
Nathaniel Counsell, Vice President  
Eric Harrison, Post-event Operations Practice Manager

### **ARTICLE 33 - SMALL BUSINESS ENTERPRISE (SBE)**

The Governing Board of the AUTHORITY has set 15% as the AUTHORITY'S goal for small business participation in contracts and purchases. CONSULTANT'S submitted Plan showing how he/she will assist the AUTHORITY in achieving this goal is incorporated into this Agreement as Exhibit C. The AUTHORITY will require periodic documentary proof, acceptable to the AUTHORITY, of the implementation, progress, and final outcome of the proposed Plan. Failure to implement the Plan, or achieve reasonable interim progress, or achieve the final goal reflected in the Plan, may be considered by the AUTHORITY as failure to perform a material provision of this Agreement.

### **ARTICLE 34 - SCRUTINIZED COMPANIES**

As provided in F.S. 287.135, by entering into any Agreement with the AUTHORITY, or performing any work in furtherance hereof, CONSULTANT hereby certifies that CONSULTANT and CONSULTANT'S affiliates, suppliers, sub-consultants and consultants who will perform hereunder, have not be 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. If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this CONSULTANT 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.

### **ARTICLE 35 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES**

The CONSULTANT agrees that this Agreement constitutes an offer to all State Agencies and Political Subdivisions 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.

The Agreement in no way restricts or interferes with any State Agency or Political Subdivision of the State of Florida from resolicitation.

### **ARTICLE 36 - FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273**

This Agreement incorporates all of the provisions set forth in the document commonly known as FHWA Form 1273, Exhibit E, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor," as used in Exhibit E, shall apply to and mean the CONSULTANT, who may also be referred to in Exhibit E as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONSULTANT will perform the duties and obligations of the other contracting party regardless of the description or label used in FHWA Form 1273, Exhibit E.

The CONSULTANT 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 [www.dot.state.fl.us/construction](http://www.dot.state.fl.us/construction). Said wage rate tables are incorporated into and made a part of this Agreement by reference.

### **ARTICLE 37 - 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 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 Exhibit F, 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 38 - DISADVANTAGED BUSINESS ENTERPRISES**

This provision shall supplement Article 36 of the Agreement. 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 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.

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.

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) website found at [www.dot.state.fl.us/equalopportunityoffice](http://www.dot.state.fl.us/equalopportunityoffice). 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 39 - CERTIFICATION REGARDING SUSPENSION AND DEBARMENT**

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.

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. The CONSULTANT acknowledges and affirms that by signing and submitting its bid or proposal, the CONSULTANT made the certification described in Section X of the attached FHWA Form 1273, Exhibit E. 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 40 - ACCESS TO RECORDS AND THEIR RETENTION**

This provision shall supplement Article 27 of the 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.

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, FHWA, 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 41- AUDIT REQUIREMENTS**

This provision shall supplement Article 27 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 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, FHWA, 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.

#### **ARTICLE 42 - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

The CONSULTANT shall cooperate with the AUTHORITY, FDOT, FHWA 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 43 - 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, FHWA, FEMA and other Federal-aid agencies.

#### **ARTICLE 44 - 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, FHWA, FEMA, and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

**ARTICLE 45 - 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.

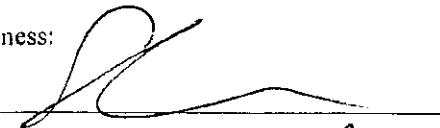

**ARTICLE 46 - CERTIFICATION REGARDING LOBBYING ACTIVITIES**

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 20. The CONSULTANT confirms that by signing and submitting a bid or proposal for the work covered by this Agreement, it made the certification described in Section XI of the attached FHWA Form 1273, Exhibit E.

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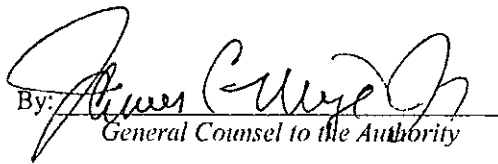
*In Witness Whereof*, this Agreement has been fully executed on behalf of the parties hereto by its duly authorized representatives, as of the date first written above.

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:**

Witness:  
1.   
2. 

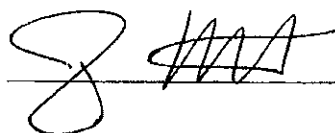
By:   
Mark Hammond  
Executive Director

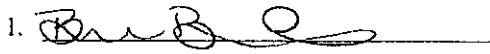
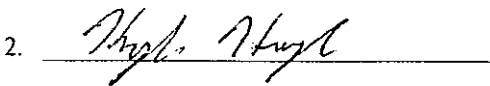
Approved as to Form and Legal Sufficiency:

By:   
General Counsel to the Authority

**THOMPSON CONSULTING SERVICES, LLC:**

Attest:  
  
Corporate Secretary

By:   
(Corporate Seal)

Witness:  
1.   
2. 

Name: Jon Hoyle  
Title: President



<b>SCOPE OF WORK</b>
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**1. General Requirements**

The CONSULTANT must be knowledgeable in Federal Emergency Management Agency (FEMA) and Federal Highway Administration (FHWA) regulations, guidelines and operating policies. The CONSULTANT will support the AUTHORITY during 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.

The AUTHORITY intends to utilize an automated debris management system (ADMS) and anticipates that the Disaster Debris Removal Contractor(s) will provide vehicle certification placards.

The AUTHORITY will provide a Field Service Representative for each AUTHORITY'S Franchise Service Area (1-5) 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 (DMS).

The AUTHORITY currently has an Enterprise GIS System 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.

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 DMS and immediately begin processing material on site and begin shipping material to final destination within ten (10) days of opening.

Task Orders will be issued against the Agreement, as necessary to complete work. What follows is a general description of the work anticipated.

**2. Scope of Services**

The scope of services to be provided pursuant to this Agreement includes, but is not limited to Project/Operations Management, Collection Monitoring, ADMS, Data Processing and Management, DMS 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.

The AUTHORITY reserves the right to select which specific services the CONSULTANT will provide and to add or delete services throughout the term of this 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**

The CONSULTANT will be responsible for monitoring and certifying all AUTHORITY'S authorized collection activities. This responsibility includes monitoring and certifying all 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.

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.

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.

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 ADMS**

Per FEMA policy document 327 Public Assistance Debris Monitoring Guide, 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.

The CONSULTANT shall provide an electronic automated debris management system that shall create load tickets electronically, eliminating the need for had 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 DMS, DMS 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);
6. Automation of debris pickup location thru use of 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. CONSUTLANT shall use an ADMS during the performance of services under this agreement for managing the collection, transport, and/or disposal of debris.

The AUTHORITY has Interlocal Agreements for Disaster Debris Management with municipalities to deliver eligible storm debris to AUTHORITY'S DMS. These municipalities may choose to use the current AUTHORITY'S paper load ticket system.

The municipalities must submit a legible and complete paper load ticket at the AUTHORITY'S DMS with each load. The AUTHORITY will provide the truck certification, placard, and load tickets for these municipalities. CONSUTLANT will be responsible to enter paper load ticket data.

***2.4 DMS Monitoring***

The CONSULTANT will provide DMS monitors and spotters to observe and document the unloading, processing and loading of debris in 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 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 DMS 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 desires the complaints to be tracked using a GIS including linked photos.

***2.7 Data Compilation and Reporting***

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.

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.

***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.

*2.9 Other Related Services*

Additional services the AUTHORITY desires the CONSULTANT to provide include the following:

- A. Assistance to 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 later date.

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<b>FEE SCHEDULE</b>
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<b>ITEM NO / POSITION DESCRIPTION</b>	<b>ESTIMATED ANNUAL HOURS</b>	<b>UNIT PRICE PER HOUR</b>	<b>EXTENSION</b>
1. Project Office/Principal	200	\$89.00	\$17,800.00
2. Project Manager	700	\$89.00	\$62,300.00
3. Operations Manager	1,900	\$62.50	\$118,750.00
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	\$89.00	\$35,600.00
8. Environmental Consultant	700	\$75.00	\$52,500.00
9. Environmental Field Technician	700	\$62.50	\$43,750.00
10. Data Manager	700	\$59.00	\$41,300.00
11. GIS Analyst/Specialist	200	\$49.00	\$9,800.00
12. Administrative Support	1,200	\$25.00	\$30,000.00
13. DMS Monitor	22,000	\$35.00	\$770,000.00
14. Field Monitor	43,000	\$35.00	\$1,505,000.00
15. Call Center Operator	4,300	\$25.00	\$107,500.00
16. Data Entry Clerk-Paper Ticket	500	\$25.00	\$12,500.00
<b>TOTAL CONTRACT PRICE: (Items 1 - 16)</b>			<b>\$3,280,600.00</b>

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.

**SBE PLAN**

The CONSULTANT is committed to the SBE Participation Plan and will make every effort to achieve AUTHORITY'S participation goal in procurement through sub-consulting to SBEs.

In response to the Request for Proposals, RFP No. 14-244/MRK, the CONSULTANT provided a list of certified SBE sub-consultant who will be used on this Agreement. The CONSUTLANT teamed with CES Consultants, Inc. (CES). CES is SBE certified with the Palm Beach County Office of Small Business Assistance. The CONSULTANT agrees to sub-consult 30% of this Agreement to CES.

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<p style="text-align: center;"><b>FEMA 322 PUBLIC ASSISTANCE GUIDE</b></p>
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**CHAPTER 5****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 *PIW* 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.

## FHWA-1273

**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 Government wide 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:



## EXHIBIT E

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

## EXHIBIT E

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.

## EXHIBIT E

### 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.

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### 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,

## EXHIBIT E

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 therefore 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

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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 contacting 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

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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



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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 this 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.

**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 melting 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, prestressed 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.