



AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Regular Commission Meeting
Wednesday, October 19, 2016 6:30 PM,
Lake Park Town Hall
535 Park Avenue

James DuBois	—	Mayor
Kimberly Glas-Castro	—	Vice-Mayor
Erin T. Flaherty	—	Commissioner
Anne Lynch	—	Commissioner
Michael O'Rourke	—	Commissioner
.....		
John O. D'Agostino	—	Town Manager
Thomas J. Baird, Esq.	—	Town Attorney
Vivian Mendez, CMC	—	Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. *Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.*

A. **CALL TO ORDER/ROLL CALL**

B. **PLEDGE OF ALLEGIANCE**

C. **SPECIAL PRESENTATIONS/REPORTS**

1. Proclamation for Dwayne Bell, Sr. Employee of the Year for 2015

Tab 1

D. **PUBLIC COMMENT:**

This time is provided for addressing items that do not appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember comments are limited to a TOTAL of three minutes.

E. **CONSENT AGENDA:** All matters listed under this item are considered routine and action will be taken by one motion. There will be no separate discussion of these items unless a Commissioner or person so requests, in which event the item will be removed from the general order of business and considered in its normal sequence on the agenda. Any person wishing to speak on an agenda item is asked to

complete a public comment card located on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.

- 2. Final Public Hearing on the Budget Meeting Minutes of September 20, 2016 Tab 2
- 3. Regular Commission Meeting Minute of September 21, 2016 Tab 3
- 4. Resolution No. 46-10-16 Second Amendment to the U.S. Security Associates, Inc. Contract Tab 4
- 5. Notification and Approval of Emergency Purchasing Procedures used in Response to Hurricane Matthew Activities Tab 5

F. PUBLIC HEARING(S) - ORDINANCE ON FIRST READING:

6. Ordinance No. 10-2016 A TOWN INITIATED ORDINANCE PROPOSING THE MODIFICATION OF TOWN CODE SECTION 6-6 TO PROVIDE FOR FLEXIBILITY THAT IS CONSISTENT WITH FLORIDA STATE STATUTE 562.45(2)(A) FOR THE SALE OF ALCOHOL NEAR CERTAIN USES AND ADDITIONAL CLARIFICATIONS.

Tab 6

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 6, SECTION 6-6 OF THE TOWN CODE PERTAINING TO THE SALE OF ALCOHOL NEAR CERTAIN USES PROHIBITED; PROVIDING FOR AMENDMENT OF SECTION 6-6 TO PROVIDE THE SAME FLEXIBILITY AS FLORIDA STATE STATUTE 562.45(2)(A); PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

G. PUBLIC HEARING(S) - ORDINANCE ON SECOND READING:

None

H. PUBLIC HEARING(S)-QUASI-JUDICIAL – RESOLUTION:

7. Resolution No. 39-09-16 Site Plan Application for the Special Exception use for a Self-Storage Facility that is proposed in Two Phases and will include a total of 201,600 Square Feet, to be located with the Congress Business Park Planned Unit Development.

Tab 7

I. NEW BUSINESS:

8. A Request from the Event Organizers of the Veterans Day Car Show proposed for Sunday, November 13, 2016 to allow the Town to be a Co-Sponsor, thereby allowing for the waiver of certain fees.

Tab 8

9. Commission Approval to Reject Bids Associated with the Kelsey Park & Lake Shore Park Community Development Block Grant (CDBG) Improvements Project – RFP No. 104-2016; Re-bid Project

Tab 9

10. Resolution No. 44-10-16 Award Contract for RFP 105-2016, Sanitation Vehicle Refurbishment, Public Works Vehicle No. 50, to Sunbelt Hydraulics

- & Equipment, Inc. Tab 10**
- 11. Resolution No. 45-10-16 to Amend the Town of Lake Park Uniform Classification System to Revise the Job Description for the Position of Grants Writer Tab 11**
- 12. Resolution No. 47-10-16 Extension of Emergency Management Standby Disaster Debris Removal and Disposal Agreement with Crowder Gulf Joint Venture, Inc. Tab 12**
- 13. Resolution No. 48-10-16 Extension of Emergency Management Standby Disaster Debris Removal and Disposal Agreement with Phillips and Jordan, Inc. Tab 13**
- 14. Reimburse Legal Fees Incurred from a Florida State Ethics Complaint Filed Against Former Commissioner Kathleen Rapoza Acting in her Official Capacity as a Town Commission Member in the Amount of \$10,110.85 Tab 14**
- 15. Christmas Tree Sales in Kelsey Park Tab 15**

I. TOWN ATTORNEY, TOWN MANAGER, COMMISSIONER COMMENTS:

J. ADJOURNMENT:

Next Scheduled Regular Commission Meeting will be held on Wednesday, November 2, 2016

TAB 12



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: October 19, 2016

Agenda Item No.

Agenda Title: Extension of Emergency Management Standby Disaster Debris
Removal and Disposal Agreement with CrowderGulf Joint Venture, Inc.

- SPECIAL PRESENTATION/REPORTS
- BOARD APPOINTMENT
- PUBLIC HEARING ORDINANCE ON ____ READING
- NEW BUSINESS**
- OTHER: _____

- CONSENT AGENDA
- OLD BUSINESS

Approved by Town Manager *David M. Hunt* Date: 10/13/2016
ACTING TOWN MGR.

D. Hunt
 David Hunt / Public Works Director

Originating Department: Public Works	Costs: None at this time Funding Source: N/A Acct. #: N/A <input checked="" type="checkbox"/> Finance _____	Attachments: - Emergency Authorization of Contract Extension - Ordinance Sections 2-245 & 2-250 - Resolution Authorizing Mayor to Execute Contract Extension with CrowderGulf Joint Venture, Inc. - Contract Extension Offer from CrowderGulf - 2016 Contract Extension between SWA and CrowderGulf - 2013 Contract between Town and CrowderGulf - SWA Agreement No. 13-251
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case <u><i>JDH</i></u> Please initial one.

Summary Explanation/Background:

Note: Due to the imminent arrival of Hurricane Matthew, the State of Florida, Palm Beach County, and Town of Lake Park began to operate under a State of Emergency. The Town

Manager executed the agreement with CrowderGulf Joint Venture, Inc. on October 4, 2016 (see attached) pursuant to Town Code of Ordinances, Chapter 2, Article V, Division 2, "Purchasing", Section's 2-245 and 2-250. This action was taken to ensure that the Town had a contractual agreement in place in the event that disaster debris overwhelmed Public Works' capacity to clear the streets. It was not necessary to utilize CrowderGulf's services for this event; however the purpose of this item is to have the contract approved at the regularly scheduled Commission meeting pursuant to Section 2-250. This one year contract extension should be formally executed and kept in place until a multi-year contract is provided by the Solid Waste Authority for piggybacking in 2017.

The Solid Waste Authority of Palm Beach County's (SWA) Agreement No. 13-251 with CrowderGulf Joint Venture, Inc.(CrowderGulf) is to provide disaster debris removal services to unincorporated areas of the County in the event of an emergency situation that overwhelms local service providers. This agreement has a clause that allows for cooperative sharing (piggy-backing) that the Town utilized in October of 2013. The Town executed this agreement with CrowderGulf, as well as with two other firms, so that back-up services would be available in the event that the Public Works Sanitation Division could not handle removal of debris generated by a large storm event. The term of the SWA agreement with CrowderGulf expired on August 20, 2016, with an option of extending the agreement until the year 2020.

The SWA opted for just a one year extension at its August 8, 2016 Board Meeting. CrowderGulf offered the same terms for this one year extension to the Town of Lake Park. The current agreement would remain in effect until August of 2017 while the SWA implements a new solicitation for disaster debris removal and disposal services.

In order to have emergency debris removal coverage while the SWA issues another RFP, it would be in the best interest of the Town to keep the current agreement active. It is anticipated that the Town will again piggy-back off the new long term contract that the SWA implements in 2017.

This agreement is non-binding and funding is not required unless and until the Town decides to use CrowderGulf's services after a severe storm event.

Recommended Motion: I move to authorize the Commission to approve the execution of the Contract Extension for Hurricane/Disaster Debris Removal, Reduction, and Disposal Services with CrowderGulf Joint Venture, Inc. that will have a new expiration date of August 20, 2017.

CrowderGulf

Disaster Recovery and Debris Management

5435 Business Parkway
Theodore, Alabama 36582

Office: (800) 992-6207
Fax: (251) 459-7433

September 12, 2016

Mr. David Hunt
Director of Public Works
Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

via email: publicworks@lakeparkflorida.gov

Re: Contract Renewal for Hurricane/Disaster Debris Removal, Reduction & Disposal Services

Dear Mr. Hunt:

CrowderGulf has been providing the Town of Lake Park Hurricane/Disaster Debris Removal, Reduction & Disposal Services per the agreement executed on October 2, 2013 under the same terms and conditions as the Solid Waste Authority of Palm Beach County contract. The term of the Agreement shall continue until August 20, 2016 unless otherwise terminated as provided in the Agreement. The Authority shall have the option of extending the Agreement until April 20, 2020 at the same terms and conditions. On August 21, 2016 the Authority approved the renewal of this Agreement.

If the Town of Lake Park is in agreement to renew the existing contract, please sign the renewal acceptance below and return to CrowderGulf. Upon execution of this acknowledgement, the contract will continue under the same terms and conditions until its new expiration date of August 20, 2017.

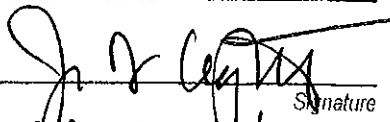
We appreciate the opportunity to renew this contract and stand ready to respond immediately in the event the community of the Town of Lake Park requests our services. If you have any questions or if we can be of any further assistance please do not hesitate to contact me or Ashley Ramsay at 800-992-6207 or by e-mail jramsay@crowdergulf.com.

Best regards,



John Ramsay
President

RENEWAL ACCEPTANCE – Town of Lake Park, FL



Signature
John D. Agostino

Town Manager Name/Title
10/4/16

Date

TOWN CODE OF ORDINANCES
CHAPTER 2, ARTICLE V, DIVISION 2, "PURCHASING"

Sec. 2-245. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency purchase: Procurement made in response to certain emergencies or when the delay caused by complying with all governing rules, regulations, and/or procedures would be detrimental to the health, safety and welfare of the town and/or its citizens or would create a hardship on the reasonable conduct of business in a timely fashion. Lack of planning, or funding surpluses, do not justify emergency purchases.

Sec. 2-250. Alternative source selection.

(c) *Emergency purchases.* The town manager or designee may make or authorize emergency purchases as defined herein. The appropriate department director of the originating department shall document in writing that such goods and/or services need to be purchased on an emergency basis. Emergency purchases above the town manager's purchasing authority shall be approved by the town commission at the next regularly scheduled commission meeting. Written determinations documenting emergency purchases shall be retained for a period of at least three years.

RESOLUTION NO. 47-10-16

A RESOLUTION OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXTEND THE EMERGENCY DISASTER DEBRIS MANAGEMENT SERVICES AGREEMENT FOR AN ADDITIONAL ONE-YEAR PERIOD WITH THE SPECIALTY DISASTER MANAGEMENT COMPANY OF CROWDERGULF JOINT VENTURE, INC., TO ASSIST THE TOWN IN REMOVING DEBRIS 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 debris removal contractor to clear public property and public right-of-ways after a major hurricane or disaster and then haul the debris to an appropriate facility for disposal; and

WHEREAS, the SWA awarded three year contracts that expired on August 20, 2016 to five companies with the condition that the contractors agree 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, the Solid Waste Authority Board approved extending these contracts for an additional one (1) year period on August 8, 2016; and

WHEREAS, CrowderGulf Joint Venture, Inc. has offered an extension to the Agreement to the Town of Lake Park under the same terms and conditions of the original contract until its new expiration date of August 20, 2017; 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. 13-251 extension, and to have in place a standby agreement with CrowderGulf Joint Venture, Inc.

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. CrowderGulf Joint Venture, Inc. is hereby approved by the Town Commission of the Town of Lake Park to extend hurricane / disaster debris removal, reduction, and disposal services on a standby basis to the Town. 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.

CrowderGulf

Disaster Recovery and Debris Management

5435 Business Parkway
Theodore, Alabama 36582

Office: (800) 992-6207
Fax: (251) 459-7433

September 12, 2016

Mr. David Hunt
Director of Public Works
Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

via email: publicworks@lakeparkflorida.gov

Re: Contract Renewal for Hurricane/Disaster Debris Removal, Reduction & Disposal Services

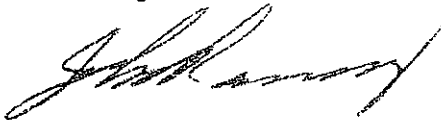
Dear Mr. Hunt:

CrowderGulf has been providing the Town of Lake Park Hurricane/Disaster Debris Removal, Reduction & Disposal Services per the agreement executed on October 2, 2013 under the same terms and conditions as the Solid Waste Authority of Palm Beach County contract. The term of the Agreement shall continue until August 20, 2016 unless otherwise terminated as provided in the Agreement. The Authority shall have the option of extending the Agreement until April 20, 2020 at the same terms and conditions. On August 21, 2016 the Authority approved the renewal of this Agreement.

If the Town of Lake Park is in agreement to renew the existing contract, please sign the renewal acceptance below and return to CrowderGulf. Upon execution of this acknowledgement, the contract will continue under the same terms and conditions until its new expiration date of August 20, 2017.

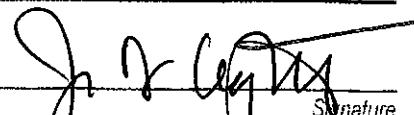
We appreciate the opportunity to renew this contract and stand ready to respond immediately in the event the community of the Town of Lake Park requests our services. If you have any questions or if we can be of any further assistance please do not hesitate to contact me or Ashley Ramsay at 800-992-6207 or by e-mail jramsay@crowdergulf.com.

Best regards,



John Ramsay
President

RENEWAL ACCEPTANCE – Town of Lake Park, FL



Signature
John D. Agostino

Town Manager Name/Title
10/4/16

Date



August 8, 2016

MEMORANDUM

TO: Vice Mayor Hal Valeche, Chair
and Solid Waste Authority Board Members

SUBJECT: Extension of Emergency Management Standby Disaster
Debris Removal and Disposal Agreements

RECOMMENDATION: Authorize Executive Director to extend Emergency
Disaster Debris Management Services Agreements for an
additional one-year period with the following: Phillips &
Jordan; Ashbritt, Inc.; Ceres Environmental; Crowder Gulf;
and Bergeron Emergency Services.

BACKGROUND:

The Solid Waste Authority (SWA) has been designated the agency responsible for debris removal and disposal operations under Palm Beach County's Comprehensive Emergency Management Plan. Experience has shown that the ability of SWA to provide timely and effective cleanups during past storm events is accomplished by having in place qualified debris contractors on standby agreements.

There is no cost to the Authority for extending these standby agreements. Each agreement clearly itemizes unit prices and hourly rates that the vendors will be reimbursed for various debris management activities performed.

The Emergency Management Standby Disaster Debris Removal and Disposal Agreements were originally awarded in August 2013 after a competitive RFP selection process and were for an initial 3-year term with a second term extension through April 2020. Staff currently recommends extending these contracts for an additional one (1) year period. Staff will be working in upcoming months to implement a new solicitation for disaster debris removal and disposal services. This new solicitation will provide contract start/end dates during non-hurricane season and ensure compliance with OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments), and 2 C.F.R. Part 200, the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Super Circular" or "Omni Circular"), effective December 2014.

ITEM S.D
Page # 1/2

The Super Circular is a Federal government-wide framework for grants management and is intended to reduce administrative burden for non-federal entities receiving federal awards while reducing the risk of waste, fraud and abuse. The reform affects administrative aspects of Federal grants (e.g., how grants are awarded, managed, audited and closed-out). FEMA has adopted the provisions of the Super Circular in grant awards.

BUDGET IMPACT: There is no budget impact unless activated.

ATTACHMENTS: None.

REVIEWS:

Director:	_____	Date:	_____
Chief Officer:	<u>Mark Ligo</u>	Date:	<u>8/8/2016</u>
Chief Financial Officer: (as required)	_____	Date:	_____
Legal Counsel: (as required)	<u>Philip Provenzano</u>	Date:	<u>8/9/2016</u>
Managing Director:	<u>[Signature]</u>	Date:	<u>8/8/2016</u>
Executive Director:	<u>Markell</u>	Date:	<u>8/8/16</u>

**AMENDMENT #2 TO THE AGREEMENT FOR
HURRICANE / DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL BETWEEN
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY AND CROWDERGULF JOINT VENTURE, INC
DATED THE 21ST DAY OF AUGUST, 2013**

This Second Amendment, dated the 21st day of August, 2016 to the Agreement for the above written services, **Agreement No. 13-251**, between the **Solid Waste Authority of Palm Beach County** (hereinafter referred to as **AUTHORITY**), and **CrowderGulf Joint Venture, Inc.** (hereinafter referred to as **CONTRACTOR**).

Whereas, both parties desire to extend the term of the Agreement for one (1) additional year as provided in Article 1 of the original Agreement; and,

Whereas, **AUTHORITY**, desires **CONTRACTOR** to continue to perform the services as may be specifically designated and authorized by the **AUTHORITY**; and,

Now, therefore, in consideration of the foregoing and the mutual promises and covenants contained herein, and other good and valuable consideration, the parties hereto agree as follows:

In accordance with Article 1 – Effective Date, the **AUTHORITY** and the **CONTRACTOR** mutually agree to extend the Agreement for the above written services for a term of one (1) year effective **August 21, 2016 through August 20, 2017**.

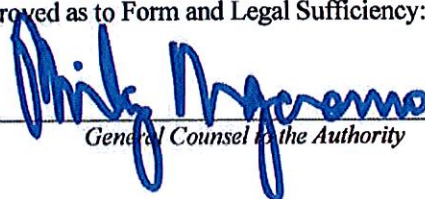
All other provisions of the Agreement for the services as written above dated the 21st of August, 2013 shall remain in full force and effect and shall not be altered, amended or rescinded except as provided herein.

In Witness Whereof, the Executive Director of the **AUTHORITY** has made and executed this Amendment on behalf of the Solid Waste Authority of Palm Beach County and CrowderGulf Joint Venture, Inc. has executed this Amendment as of the day and year above written.



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

Attest: 
 Corporate Secretary

Witness:
 1.  _____
 2.  _____

CROWDERGULF JOINT VENTURE, INC.:

By: 
 Signature (Corporate Seal)
 Name: John Ramsay
 Title: President

CrowderGulf

Disaster Recovery and Debris Management

5435 Business Parkway
Theodore, Alabama 36582

Office: (800) 992-6207
Fax: (251) 459-7433

September 12, 2013

Mr. David Hunt
Director of Public Works
Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

Via email: publicworks@lakeparkflorida.gov

Re: Hurricane/Disaster Debris Removal, Reduction and Disposal Agreement

Dear Mr. Hunt:

Please allow this letter to serve as CrowderGulf's commitment to provide hurricane/disaster debris removal, reduction and disposal to the Town of Lake Park under the same terms and conditions of the Solid Waste Authority of Palm Beach County contract for hurricane/disaster debris removal, reduction and disposal per Article 39, agreement No. 13-251. The term of the SWA of Palm Beach County contract commenced on August 21, 2013 and will continue until August 20, 2016 unless otherwise terminated. The Authority shall have the option of extending the agreement until April 20, 2020 at the same terms and conditions with approval from the Authority's Governing Board.

The Town of Lake Park will receive the same level of support and pricing as stated in the SWA of Palm Beach County contract. The Town's agreement will be administrated independently of SWA of Palm Beach County and all issues will be handled direct with CrowderGulf. Please acknowledge the acceptance of this agreement by signing and returning a copy of this letter for our files.

Thank you for this opportunity and we look forward to working with the Town of Lake Park in the future if our services are needed. If you have any questions, or if we can be of any further assistance, please do not hesitate to contact me or Ashley Ramsay at the CrowderGulf Disaster Administration Office 800-992-6207 or by e-mail jramsay@crowderygulf.com.

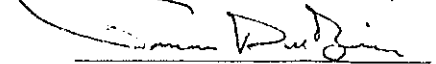
Best regards,



John Ramsay
President

APPROVED BY: Town of Lake Park, FL

Signature:



Name/Title:

James DuBois Mayor

Date:

10-3-13

RESOLUTION NO. 35-10-13

A RESOLUTION OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF ENGAGEMENT WITH THE SPECIALTY DISASTER MANAGEMENT COMPANY OF CROWDERGULF JOINT VENTURE, INC., TO ASSIST THE TOWN IN REMOVING DEBRIS 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 debris removal contractor to clear public property and public right-of-ways after a major hurricane or disaster and then haul the debris to an appropriate facility for disposal; 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 contractors in order to have in place standby agreements with a short list of companies to provide timely and effective cleanup after a storm event; and

WHEREAS, The SWA team Selection Committee thoroughly reviewed all proposals and selected five companies and listed them in order of the committee's ranking for a short list; and

WHEREAS, the SWA awarded contracts to all five companies with the condition that the contractors agree 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. 13-251, and to have in place a standby agreement with CrowderGulf Joint Venture, Inc.

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. CrowderGulf Joint Venture, Inc. is hereby approved by the Town Commission of the Town of Lake Park to provide hurricane / disaster debris removal, reduction, and disposal services on a standby basis to the Town, and the Mayor is hereby authorized to execute a letter of engagement between the Town and CrowderGulf Joint Venture, Inc. 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 O'Rourke, who moved its adoption. The motion was seconded by Vice-Mayor Glas-Castro and upon being put to a roll call vote, the vote was as follows:

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

The Town Commission thereupon declared the foregoing Resolution NO. 35-10-13 duly passed and adopted this 2 day of October, 2013.

TOWN OF LAKE PARK, FLORIDA

BY: James Dubois
JAMES DUBOIS
MAYOR

ATTEST:

Vivian Mendez
VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: Thomas J. Baird
THOMAS J. BAIRD
TOWN ATTORNEY



AGREEMENT

FOR

**HURRICANE / DISASTER DEBRIS
REMOVAL, REDUCTION AND DISPOSAL**

BETWEEN

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

CROWDERGULF JOINT VENTURE, INC.

AGREEMENT NO. 13-251

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**HURRICANE / DISASTER DEBRIS
REMOVAL, REDUCTION AND DISPOSAL
AGREEMENT NO. 13-251**

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 **CrowderGulf Joint Venture, Inc.** (hereinafter referred to as **CONTRACTOR**), a Florida Corporation, whose Federal Employer Identification Number is 01-0626019.

WHEREAS, **AUTHORITY** requires the removal, reduction, and disposal of hurricane/disaster debris; and,

WHEREAS, **CONTRACTOR** 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 **August 21, 2013** and shall continue until **August 20, 2016** unless otherwise terminated as provided herein. The **AUTHORITY** shall have the option of extending the Agreement until **April 20, 2020** at the same terms and conditions with approval from the **AUTHORITY's** Governing Board. Such extension shall be in the form of a written Amendment to the Agreement executed by both parties. The continuance of this Agreement may be contingent upon a review of the fiscal (bankruptcy, etc), logistical (equipment availability, etc.), and moral (conviction for environmental crime, conviction for crime against a public entity, etc.) responsibility of the **CONTRACTOR** and a determination by the **AUTHORITY**, based on this review, of whether or not the **CONTRACTOR** continues to be a viable firm to provide the services described in this Contract.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

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

ARTICLE 3 - COMPENSATION

3.1 - GENERAL

AUTHORITY shall pay **CONTRACTOR** in accordance with Fee Schedule, Exhibit B, which is attached hereto and incorporated by reference as part of this Agreement. If needed, compensation may be negotiated as a lump sum or not-to-exceed amount for any Task Order containing a task covered by the scope of work of this Agreement but to which the Fee Schedule cannot readily be applied.

The **AUTHORITY** reserves the right to renegotiate Fee schedule, Exhibit B in the event there is a need for more than one **CONTRACTOR** to be mobilized.

CONTRACTOR shall submit semi-monthly invoices for services rendered. Invoices must reference the Task Order number. Invoices shall include a statement of progress and appropriate audit quality detail to satisfy FEMA requirements.

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

Each individual invoice shall be due and payable thirty (30) days after receipt of correct, fully documented, invoice by the AUTHORITY. 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

In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the AUTHORITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the AUTHORITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR.

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

ARTICLE 4 - INSURANCE

During the performance of the Services under this Agreement, CONTRACTOR 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 \$5,000,000 for each person and not less than \$5,000,000 for each accident and with property damage limits of not less than \$5,000,000 for each accident.
3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.
4. **Excess Liability** Insurance with limits of not less than \$10,000,000 for each occurrence and annual aggregate.

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.

CONTRACTOR shall furnish AUTHORITY **certificates of insurance** which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** written notice has been made to the AUTHORITY.

CONTRACTOR shall include AUTHORITY as an **additional insured** on the General Liability, Excess Liability, and Automobile Liability insurance policy required by the Agreement. All of CONTRACTOR'S sub-contractors shall be required to include AUTHORITY and CONTRACTOR as **additional insured** on their General Liability insurance policies.

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

The CONTRACTOR shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

CONTRACTOR 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 CONTRACTOR shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

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

6.2 INDEMNIFICATION

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

6.3 SURVIVAL

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

ARTICLE 7 - INDEPENDENT CONTRACTOR

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR 'S sole direction, supervision, and control. The

CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR 'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

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

The CONTRACTOR shall not pledge the AUTHORITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 8 - AUTHORITY TO PRACTICE

The CONTRACTOR 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, CONTRACTOR will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

ARTICLE 10 - SUB-CONTRACTING

The AUTHORITY reserves the right to accept the use of a sub-contractor or to reject the selection of a particular sub-contractor and to inspect all facilities of any sub-contractor to perform properly under this Agreement. Rejection of any sub-contractor will be based on, but not limited to, negative references, insufficient resources, or conviction of a Public Entity Crime.

If a sub-contractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the sub-contractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new sub-contractor by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

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

ARTICLE 12 - AVAILABILITY OF FUNDS

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

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONTRACTOR that is available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR 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 CONTRACTOR, the AUTHORITY may procure goods and/or services similar to those terminated, and the CONTRACTOR shall be liable for any excess costs incurred due to this action.

If it is determined that the CONTRACTOR was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the CONTRACTOR), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

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 CONTRACTOR, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONTRACTOR has the right to withdraw, without adverse action, from the entire Agreement.

Unless directed differently in the Notice of Termination, the CONTRACTOR shall incur no further obligations in connection with the terminated work, and shall stop work to the extent specified and on the date given in the Notice of Termination. Additionally, unless directed differently, the successful CONTRACTOR shall terminate outstanding orders and/or subcontracts related to the terminated work.

Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

Neither the AUTHORITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, 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 CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes (Public Records Law) for records related to this Agreement.

ARTICLE 18 - NON-DISCRIMINATION

CONTRACTOR assures and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further 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 20 - 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 21 - ENTIRETY OF AGREEMENT

The AUTHORITY and the CONTRACTOR 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 CONTRACTOR 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 22 - MODIFICATION

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

ARTICLE 23 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONTRACTOR 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. CONTRACTOR shall not assign this Agreement without the express written approval of the AUTHORITY via executed amendment.

ARTICLE 24 - CONTINGENT FEES

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

ARTICLE 25 - TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the 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 contractors. The AUTHORITY shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 26 - OWNERSHIP OF DOCUMENTS

CONTRACTOR shall be required to cooperate with other contractors 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 27 - ACCESS AND AUDITS

CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency sub-grantee as required by FEMA'S 322 Public Assistance Guide, page 114, as amended, incorporated in this Agreement as Exhibit G. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the CONTRACTOR'S place of business.

ARTICLE 28 - NOTICE

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

As To AUTHORITY

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

As To CONTRACTOR

CrowderGulf Joint Venture, Inc.
5435 Business Parkway
Theodore, Alabama 36582
Attention: John Ramsay, President
Office No.: 800-992-6207 Fax No.: 251-459-7433

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

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

ARTICLE 29 - CONTRACT ADMINISTRATION

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

ARTICLE 30 - KEY PERSONNEL

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

John Ramsay, President
Office No.: 800-992-6207 E-Mail: jramsay@crowdergulf.com

ARTICLE 31 - CONFIDENTIALITY

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

ARTICLE 32 - ESCALATION CLAUSE

The AUTHORITY acknowledges the fluctuating nature of prices. Therefore, on each annual anniversary date of the Agreement, the Fee Schedule, Exhibit B may be adjusted based on the following formula of indices:

Fifty (50) percent of the price will be adjusted by the average monthly percentage change over the twelve (12) month period ending the May immediately preceding the date for which the price index adjustment is effective in the Consumer Price Index - Urban Wage Earners and Clerical Workers - U.S. City Average - Private Transportation (Series ID CWUR0000SAT1, not seasonally adjusted) as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

Fifty (50) percent of the price will be adjusted by the percentage change in the Average Hourly Earnings of Production Workers (Series ID CEU2000000008) as published by the Bureau of Labor Statistics of the U.S. Department of Labor over the one year period ending the May immediately preceding the date for which the price index adjustment is effective.

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

ARTICLE 33 - ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

The CONTRACTORS have entered into contingent Agreements with the AUTHORITY for Hurricane/Disaster Debris Removal, Reduction and Disposal. The Agreements awarded will be activated on an as needed basis as solely determined by the AUTHORITY. The AUTHORITY intends to activate the CONTRACTORS in the order of the Selection Committee ranking, as best meets the needs of the AUTHORITY. The AUTHORITY reserves the sole right to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action.

ARTICLE 34 - TASK ORDER/PERFORMANCE

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

ARTICLE 35 - BONDS

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

ARTICLE 36 - 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. CONTRACTOR'S submitted Plan showing how he/she will assist the AUTHORITY in achieving this goal is incorporated into this Agreement as Exhibit E. 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 37 - SCRUTINIZED COMPANIES

As provided in F.S. 287.135, by entering into any Agreement with the AUTHORITY, or performing any work in furtherance hereof, CONTRACTOR hereby certifies that CONTRACTOR and CONTRACTOR'S affiliates, suppliers, subcontractors 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 CONTRACTOR, this CONTRACTOR 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.A. 287.135.

ARTICLE 38 – OFFICE OF INSPECTOR GENERAL

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

ARTICLE 39 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

The CONTRACTOR 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 CONTRACTOR 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 40 - 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 I, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor," as used in Exhibit I, shall apply to and mean the CONTRACTOR, who may also be referred to in Exhibit I as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONTRACTOR will perform the duties and obligations of the other contracting party regardless of the description or label used in FHWA Form 1273, Exhibit I.

The CONTRACTOR shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or "linked" to a particular Federal highway. Wage rate tables may be found at www.dot.state.fl.us/construction. Said wage rate tables are incorporated into and made a part of this Agreement by reference.

ARTICLE 41 - BUY AMERICA REQUIREMENTS

The CONTRACTOR agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), 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 J, which is attached hereto and incorporated by reference as part of this Agreement. CONTRACTOR shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, FHWA, and FEMA, to the extent applicable.

ARTICLE 42 - 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 CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13.) Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.

The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR'S receipt of payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its

subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.

The CONTRACTOR shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONTRACTOR shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation's (FDOT) website found at www.dot.state.fl.us/equalopportunityoffice. Audits may be conducted to review payments to DBE subcontractors. The CONTRACTOR will fully cooperate with the AUTHORITY, FDOT, FHWA or FEMA regarding the monitoring of subcontractors and payments made thereto.

ARTICLE 43 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONTRACTOR shall verify that neither the CONTRACTOR, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONTRACTOR must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. The CONTRACTOR acknowledges and affirms that by signing and submitting its bid or proposal, the CONTRACTOR made the certification described in Section X of the attached FHWA Form 1273, Exhibit I. CONTRACTOR'S certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 44 - ACCESS TO RECORDS AND THEIR RETENTION

This provision shall supplement Article 27 of the Agreement. The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONTRACTOR agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.

The CONTRACTOR shall make all of its books, records, and other documents related, in any manner to its or its subcontractors' performance of the Agreement, available to the Authority and any other funding entity (e.g., FDOT, 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 CONTRACTOR'S place of business or if CONTRACTOR'S place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONTRACTOR shall also require its subcontractors to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONTRACTOR.

ARTICLE 45 - AUDIT REQUIREMENTS

This provision shall supplement Article 27 of the Agreement. The CONTRACTOR agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONTRACTOR agrees that it will comply 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 CONTRACTOR'S performance of the Agreement.

ARTICLE 46 - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONTRACTOR 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 47 - AMERICANS WITH DISABILITIES ACT

The CONTRACTOR 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 48 - COMPLIANCE WITH TITLE VI, TITLE VII AND OTHER FEDERAL LAWS AND REGULATIONS

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

ARTICLE 49 - CONVICT LABOR PROHIBITION

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

ARTICLE 50 - 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 CONTRACTOR confirms that by signing and submitting a bid or proposal for the work covered by this Agreement, it made the certification described in Section XI of the attached FHWA Form 1273, Exhibit I.

IN WITNESS WHEREOF, the Solid Waste Authority of Palm Beach County, and CrowderGulf Joint Venture, Inc. has executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

Witness:
1. Barbara Howell
2. Marcy Kedita

By: Mark Hammond
Mark Hammond
Executive Director

Approved as to Form and Legal Sufficiency:

By: James C. [Signature]
General Counsel to the Authority

CROWDERGULF JOINT VENTURE, INC.:

Attest:

Corporate Secretary

By: [Signature]
(Corporate Seal)

Witness:
1. Wesley Naile
Wesley Naile
2. Mary Challeil Turner
Mary Challeil Turner

Name: John Ramsay
Title: President

STATEMENT OF WORK

1. Project Description and Requirements

The CONTRACTOR shall remove and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible garbage) from public property and public right-of-ways, and to setup and operate Temporary Debris Sites in Palm Beach County, Florida, immediately after a hurricane or other disaster.

The CONTRACTOR submits he/she is capable of efficiently removing large volumes of disaster-generated debris from a large area in a timely and cost-effective manner and lawfully disposing of all debris. The CONTRACTOR shall assemble, direct, and manage a work force that can complete the debris management operations in 120 days or less. The duration of effort/completion dates of all tasks will be determined jointly by the AUTHORITY and CONTRACTOR. This determination will be set in writing in appropriate Task Order(s).

The CONTRACTOR shall perform all work in accordance with FEMA guidelines in order to maximize recovery of reimbursable expenses. This task shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished.

The CONTRACTOR may be required, at the AUTHORITY'S discretion, to be under the direction of an agent of the AUTHORITY.

While intended to cover debris management needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to Palm Beach County, Florida. The planning standards used for this Agreement are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida.

The AUTHORITY requires that the Proposal Bond of CONTRACTOR be in effect for the entire term of the Agreement until a debris generating event occurs and the CONTRACTOR is called to active duty. At the start of any and all active duty periods the Proposal Bond will be returned to the CONTRACTOR in exchange for the Performance and Payment Bond which will need to be in effect for the duration of the active duty period. Under no circumstances shall the CONTRACTOR start work until he/she has supplied an acceptable Performance and Payment Bond. Refer to the Agreement, Article 35 - Bonds for additional bonding requirements.

2. Background**2.1 Introduction**

The AUTHORITY'S disaster recovery planning includes considerations for removing and processing the volumes and types of debris expected to be generated by a major disaster such as a hurricane and the procedures for disposing of that debris. The planning approach is formulated in part on the concept of strategic pre-positioning of plans and resources necessary for timely, coordinated recovery operations, including removal of debris from public property and right-of-ways throughout Palm Beach County using a combination of county, municipal, and CONTRACTOR forces.

The AUTHORITY will execute multiple Agreements to carry out the debris removal and disposal work for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the

AUTHORITY in the aftermath of a major disaster throughout Palm Beach County. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and to cover the expenses associated with a major recovery operation prior to the initial AUTHORITY payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel, comprehensive debris removal and volume reduction operations plans, and demonstrable experience in major disaster recovery projects.

The Agreement will be a contingency Agreement that will be activated only in the face of an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until the Agreement is activated either in anticipation of a natural disaster or immediately after such disaster.

The CONTRACTOR will be required to participate in certain AUTHORITY directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the AUTHORITY.

2.2 Planning Standard for Debris Removal and Disposal

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

2.3 Debris Management

Planning for debris management operations is a function of the AUTHORITY as a supporting agency to the Palm Beach County Department of Engineering and Public Works. The AUTHORITY'S Emergency Management Coordinator will direct the debris removal and disposal operations.

Each CONTRACTOR will serve as a General CONTRACTOR for the purpose of debris removal and disposal operations, and will be able to use his/her own and subcontractor resources to meet the obligations of the Agreement. It is anticipated that the CONTRACTOR will use both local and non-local subcontractors. Notwithstanding, the CONTRACTOR will make every effort to use fully qualified and properly equipped local firms, including Small Business Enterprises (SBE), to the maximum extent practicable.

When a major disaster occurs or is imminent, the AUTHORITY will contact the CONTRACTOR to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will generally be limited to debris in, upon, or brought to county residential private and public streets and roads, right-of-ways, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations, consistent with the AUTHORITY'S Debris Management Plan located on AUTHORITY'S website at www.swa.org/site/hurricane/plans_and_documents. Disposal of debris will be at AUTHORITY approved Temporary Debris Sites or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all Temporary Debris Sites.

When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order to begin planning for the operations and

mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane/disaster.

The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.

The AUTHORITY will make every effort to identify strategically located Temporary Debris Sites throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional Temporary Debris Sites will be identified as needed.

The CONTRACTOR will operate the Temporary Debris Sites and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate Temporary Debris Sites. The CONTRACTOR is responsible for all activity at Temporary Debris Sites operated by their subcontractor and must have an employee on site at all times to oversee daily operations. The locations of publicly owned sites currently under consideration are shown on Exhibit C. Additional sites (privately owned mostly) may become available as plans develop.

The AUTHORITY may also establish designated homeowner drop-off sites. The CONTRACTOR will be responsible for removing all eligible debris from those sites daily at the direction of the Emergency Management Coordinator or designee.

Curbside segregation of debris and disaster-generated or related wastes will be an element of the AUTHORITY'S disaster recovery program. The debris removal and disposal CONTRACTOR will be required to aid in the segregation and waste stream management processes. Any Household Hazardous Waste (HHW) encountered by the debris removal CONTRACTOR is to be set aside. HHW disposal will be the responsibility of the resident. The AUTHORITY will designate HHW drop-off locations.

The following items are considered HHW for the purpose of this Agreement:

1. Used Oil
2. Batteries
3. Paint
4. Aerosol spray cans
5. Pesticides
6. Antifreeze
7. Fluorescent light bulbs
8. Propane tanks (household size)

The CONTRACTOR will setup a lined containment area and separate any HHW inadvertently delivered to a Temporary Debris Site.

Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will be set aside for collection and disposal by a Hazardous Materials Removal and Disposal Contractor who will be selected by the AUTHORITY.

Putrescible residential garbage will be collected by AUTHORITY franchise waste haulers and is not to be collected or transported by CONTRACTOR forces.

3. Scope of Work/Overview

This section is divided into three (3) subsections:

- 3.1 **Debris Removal and Disposal Operations** from residential public and private streets, roads and right-of-ways and delivered to a Temporary Debris Site.
- 3.2 **Temporary Debris Site Operations** which includes daily operations as well as reclamation of the site to its pre-storm condition or as directed by the AUTHORITY Emergency Management Coordinator.
- 3.3. **Processing, Loading and Hauling Material** from Temporary Debris Site to final destination.

Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, time-frame for completion, rates to be used, etc. Any job with requirements or rates not covered by this Agreement will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(s) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest.

The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.

The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.

The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY Emergency Management Coordinator prior to issuance of the first Task Order.

The quantity of work required to complete the Agreement is estimated. The actual effort required may be more or less than the estimated amount reflected in the RFP No. 13-240/MRK. Payment will be made in accordance with the Fee Schedule, Exhibit B, which is attached hereto and incorporated by reference as part of the Agreement. The output will be verified by the AUTHORITY Emergency Management Coordinator in the daily operational report. Should hourly rates be used to pay for certain equipment then preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.

The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no additional cost to the AUTHORITY.

The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.

The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

3.1 Debris Removal and Disposal Operations

3.1.1 General

The purpose of this section is to define the requirements for debris removal and disposal operations after any catastrophic disaster within Palm Beach County. The AUTHORITY intends to designate zones for collection of disposal debris. CONTRACTORS will be tasked with a service area(s) for this specific work.

For work performed on a Time and Materials basis, all hourly equipment rates shall include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, and all other costs associated with the equipment including labor and operator.

3.1.2 Services

The CONTRACTOR shall provide equipment, operators and laborers for debris removal operations. The CONTRACTOR shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, and repairs) all equipment under this Agreement.

All rates are to include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging and all other costs.

The work shall consist of clearing and removing disaster generated debris as directed by the AUTHORITY Emergency Management Coordinator. CONTRACTOR shall provide collection equipment the day following a natural disaster or as directed by the AUTHORITY and shall provide equipment sufficient to collect a minimum of 50,000 cubic yards of debris per day within ten (10) calendar days of collection commencement (AUTHORITY'S natural disaster cleanup records show that ten (10) days' following disaster, 95,000-126,000 cubic yards of debris was collected per day). Failure to provide sufficient equipment necessary to collect required amount may result in the AUTHORITY entering into a separate agreement with another contractor for debris collection services.

3.1.2.1 Collection of Storm Generated Residential Vegetation and Construction and Demolition Debris

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

Work may include:

1. First pass to clear debris from emergency evacuation routes, access roads to critical facilities and all primary roadways.
2. Clearing debris from residential private and public road right-of-ways.
3. Loading the debris.
4. Hauling the debris to an approved Temporary Debris Site or an authorized landfill.
5. Dumping the debris at the Temporary Debris Site or at an authorized landfill.

Debris delivered to a Temporary Debris Site or authorized landfill will be paid based on the price per cubic yard according to the Fee Schedule, Exhibit B.

3.1.2.2 Hourly Rate Clearing

From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:

1. Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.
2. Perform emergency removal of debris if needed for life-saving measures.
3. Conduct daily briefings with debris managers and other officials to update progress and discuss issues.
4. Develop a traffic control plan along potential haul routes and at debris management and disposal sites.

The CONTRACTOR shall not move from one designated Collection Service Area to another area without prior approval from the AUTHORITY Emergency Management Coordinator or designee. CONTRACTORS and/or subcontractors that move to a designated Collection Service Area without prior AUTHORITY approval may be terminated immediately. The AUTHORITY reserves the right to relocate CONTRACTOR to other Collection Service Areas based on need and ability to perform required work at an acceptable level. The AUTHORITY reserves the right to immediately terminate CONTRACTOR and any subcontractor who fails to provide service in accordance to guidelines set forth by FEMA, FHWA Form 1273, attached hereto as Exhibit I, and the AUTHORITY.

The AUTHORITY or designee shall forward all claims of damage to the CONTRACTOR daily. CONTRACTOR shall provide all contact information, including name, phone number, cellular phone number, fax number and email address, for personnel responsible for resolving all claims of damage. CONTRACTOR must respond to all claims of damage within 24 hours and resolve within ten (10) calendar days. Mailboxes must be repaired or replaced within two (2) calendar days. CONTRACTOR is responsible for all damage caused by his crew and/or subcontractors in the performance of debris removal.

In the event the CONTRACTOR fails to repair damages as a result of the CONTRACTOR'S equipment failure or negligence within the time provided within this Agreement, the AUTHORITY or designee may arrange for the repairs and assess the CONTRACTOR for the cost of the repairs and any applicable administrative charges. Any disputes as to damage responsibility will be presented to the Emergency Management Coordinator or designee for review. The decision of the Emergency Management Coordinator or designee will be final.

3.1.3 Equipment

All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment and be equipped with a tailgate that will effectively contain the debris

during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:

1. Fencing must be permanently attached to one side of the truck bed.
2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
3. Fencing must extend to the bottom of the bed.
4. After loading, bottom of fencing shall be tight against the bed of the truck and secured at a minimum of two locations.
5. Solid iron metal bars must be secured to both sides of the fencing.
6. There shall be no hand loaded equipment allowed.

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

All trucks and trailers utilized in hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. If installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and remarked. All extensions to the bed are subject to acceptance or rejection by the AUTHORITY Inspector.

Trucks or equipment designated for use under this Agreement shall not be used for any other work during working hours. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement. Under no circumstance will the CONTRACTOR mix debris hauled for others with debris hauled under this Agreement. Failure to comply will result in no payment to CONTRACTOR and operator and vehicle will be declared ineligible to provide any additional emergency debris collection services. Any and all unapproved changes to placard will result in no payment to CONTRACTOR and operator and vehicle will be declared ineligible to perform any additional emergency debris collection services.

3.1.4 Securing Debris

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

3.1.5 Equipment Signage

Prior to commencing operations, the AUTHORITY or designee shall affix to each piece of equipment, signs or markings indicating the Owner Operator's name and a unique equipment identification number.

One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Each operator shall keep AUTHORITY certification with them at all times. Placards must remain on both sides of equipment.

3.1.6 Other Considerations

The CONTRACTOR shall assign and provide an Operations Manager (OM) to the AUTHORITY Debris Management Center to serve as the principal liaison between the AUTHORITY Emergency Management Coordinator or designee and the CONTRACTOR'S forces. The assigned OM must be knowledgeable of all facets of the CONTRACTOR'S operations and have authority in writing to commit the CONTRACTOR. The OM shall be on call 24 hours per day, seven (7) days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for onsite accommodations. This linkage shall provide immediate contact via cell phone, Fax machine, and have Internet capabilities. The OM will participate in daily meetings and disaster exercises, functioning as a source to provide essential element information. The OM will report to the AUTHORITY Emergency Management Coordinator or designee. This position will not require constant presence; rather the OM will be required to be physically capable of responding to the AUTHORITY Emergency Management Coordinator within 30 minutes of notification.

The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.

The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

Payment for debris hauled will be based on the quantity of debris hauled in cubic yards. Debris hauled to a Temporary Debris Site will require a validated load ticket. Drivers will be given an electronic or paper load tickets at the loading site by an AUTHORITY loading site monitor. The quantity of debris hauled will be estimated in cubic yards at the Temporary Debris Site by an AUTHORITY Temporary Debris Site monitor. The estimated quantity will be recorded on the electronic or paper load ticket. The AUTHORITY Temporary Debris Site monitor will retain one copy of the paper load ticket and the driver will retain the remaining copies of the load ticket. Debris being hauled to a permanent landfill will be paid based on cubic yards recorded on an approved electronic or paper load ticket. Payment will be made against the CONTRACTOR'S invoice once site monitor and CONTRACTOR load tickets and/or scale tickets match. Load tickets not properly completed and signed will not be paid.

3.2 Temporary Debris Site Operations

3.2.1 General

The purpose of this section is to define the requirements for Temporary Debris Site Operations after any catastrophic disaster within Palm Beach County.

The CONTRACTOR shall use only Temporary Debris Sites designated by the AUTHORITY Emergency Management Coordinator.

The Temporary Debris Site foreman shall direct all dumping operations. Different types of debris shall be kept in separate piles at the Temporary Debris Site. At a minimum, one flag person shall be posted at each Temporary Debris Site for traffic control and to direct unmixed loads to proper location (by debris

type) to be dumped. CONTRACTOR shall be responsible for sorting and proper placement of all loads not dumped in appropriate location which results in mixing the once separated debris at no charge to the AUTHORITY.

The CONTRACTOR shall begin grinding vegetative debris within five (5) calendar days of Temporary Debris Site opening date and removing mulch/wood chips within ten (10) calendar days of site opening date. The CONTRACTOR shall begin removal of Construction and Demolition/mixed debris from Temporary Debris Site to an approved final destination within five (5) days of site opening date.

3.2.2 Temporary Debris Site Services

3.2.2.1 Site Setup/Preparation and Site Closeout/Restoration

Site setup/preparation and site closeout/restoration shall be compensated on a time and materials basis in accordance with the hourly rates provided in the Fee Schedule, Exhibit B, which is attached hereto and incorporated by reference as part of this Agreement. Site set-up preparation and closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, limerock or crushed concrete access roads, sodding, and any other similar activity necessary to make the site usable for its intended purposes and to return the site to its original condition. .

3.2.2.2 Temporary Debris Site Operations and Material Processing

Temporary Debris Site operations and material processing shall be compensated in accordance with the unit prices provided in the Fee Schedule, Exhibit B. The CONTRACTOR shall provide equipment, operators, and laborers for Temporary Debris Site operations as specified by Task Order. Unit prices provided in the Fee Schedule, Exhibit B, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance) all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each Temporary Debris Site. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the debris site. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, and any other costs. The work shall consist of managing the operations of a Temporary Debris Site and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator.

The AUTHORITY plans to use two types of Temporary Debris Sites.

1. Vegetative Temporary Debris Sites will be devoted to the reduction of clean woody debris by either burning or grinding. The AUTHORITY expects the material to be recycled and or beneficially re-used if processed by grinding.
2. Depending upon the size and type of devastation the AUTHORITY may require a separate Construction & Demolition (C&D) staging area, mixed debris staging area and a separate Household Hazardous Waste staging area. The AUTHORITY requests that CONTRACTOR implements recycling and or reduction programs to minimize the quantity of construction debris material to be land filled.

Material coming into the Vegetative or C&D Temporary Debris Sites will be measured and paid for by the cubic yard according to the Fee Schedule, Exhibit B. Material removed and transported from a C&D Temporary Debris Site will be measured and paid by the cubic yard according to the Fee Schedule, Exhibit B.

Locations of all Temporary Debris Sites will be provided by the AUTHORITY. The AUTHORITY Emergency Management Coordinator must approve site improvements before work begins and any costs, other than those in the Fee Schedule, Exhibit B, that might have been negotiated under a Task Order shall be documented for payment.

Material processed at a Temporary Debris Site by either grinding or burning will be measured using cubic yards from incoming load tickets. Material entering a Publicly Owned Debris Management Site, Exhibit D will be deposited in manageable piles.

3.2.3 Reporting

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

1. Contractor's Name
2. Contract Number
3. Daily and cumulative hours for each piece of equipment, *if appropriate*
4. Daily and cumulative hours for personnel, by position, *if appropriate*
5. Volumes of debris handled

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

3.2.4 Other Considerations

The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. In the event a Temporary Debris Site must be closed due to CONTRACTOR equipment or operational failures, CONTRACTOR shall be liable for liquidated damages in the amount of \$25,000 per day for every day the site has to remain closed.

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

The AUTHORITY provides support to Palm Beach County Government for Debris Management, including the clearance (moving debris from the middle of the road, etc.) of debris from right-of-ways and public property. Palm Beach County intends to perform debris clearance for access with its own forces or under existing contractual Agreements between the County and local firms. However, in a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner.

This debris clearance is to be considered supplemental and optional service. It is anticipated that debris clearance activities would be conducted, if needed, on a time and material basis using the rates in the Fee Schedule, Exhibit B.

3.3 Processing, Loading and Hauling Material

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

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

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch and construction/demolition debris is disposed, to include address/GPS location.

4. Miscellaneous Requirements

4.1 Temporary Debris Site Foreman

The Temporary Debris Site foreman must be an employee of the CONTRACTOR and is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety.

The Temporary Debris Site foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Emergency Management Coordinator or designee.

4.2 Temporary Debris Site Night Foreman

The Temporary Debris Site night foreman must be an employee of the CONTRACTOR and is responsible for managing all night operations approved by the AUTHORITY.

The Temporary Debris Site night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Emergency Management Coordinator or designee.

4.3 Temporary Debris Site Management Plan

Once the Temporary Debris Site is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.

Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:

1. Access to site
2. Site preparation - clearing, erosion control, and grading
3. Traffic control procedures
4. Safety
5. Segregation of debris
6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures

8. Location of existing structures or sensitive areas requiring protection

4.4 Inspection Tower

The CONTRACTOR shall construct an inspection tower at each Temporary Debris Site within three (3) calendar days of natural disaster. The tower shall be constructed using pressure treated wood or steel scaffold. The floor elevation of the tower shall be 10-feet above the existing ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Inspection towers must provide a dry area for employees and meet all FEMA OSHA requirements.

4.5 Grinding Operation

The CONTRACTOR shall have grinders on site and in operation within 72 hours of natural disaster. Failure to provide grinder(s) on site in operation within 72 hours shall result in liquidated damages of \$10,000 per day. There shall be no period longer than 24 hours in which grinding activity may stop due to equipment or operational failure. Failure to provide back-up equipment within 24 hours shall result in a \$2,000 fine per hour per approved hours of grinding operation per day until grinding activity resumes.

4.6 Household Hazardous Waste Containment Area

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

5. Performance of Contractor

It is the intent of this Agreement to ensure that the CONTRACTOR provides a quality level of services. To this end, all complaints received by the Emergency Management Coordinator or designee, and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.

The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:

1. Failure to open pre-storm identified sites within three (3) calendar days after being tasked by the AUTHORITY shall result in liquidated damages of \$10,000 per day for each day not opened.
2. Closure of Temporary Debris Site due to CONTRACTOR equipment or operational failures shall result in liquidated damages of \$25,000 per day, for each day site must remain closed.

Failure to provide back-up grinders within 24 hours of equipment breakdown shall result in liquidated damages of \$2,000 fine per hour per approved grinding hours of operation per day.

CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each of the following infractions:

1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.
2. Loads not properly tarped or otherwise covered.

3. Mixing debris hauled from other sources with debris hauled under this Agreement.
4. Mixing vegetation debris with C & D material.

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

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

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

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FEE SCHEDULE

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

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated Temporary Debris Site.				
A. Vegetation	2,500,000	CY	\$7.90	\$19,750,000.00
B. Construction Debris / Mixed Debris	500,000	CY	\$8.75	\$4,375,000.00
2.0 Temporary Debris Site operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and phase I reclamation.	3,000,000	CY	\$1.20	\$3,600,000.00
3.0 Processing of debris through grinding and/or chipping.	2,500,000	CY	\$2.70	\$6,750,000.00
4.0 Loading, hauling and disposing wood chips to final destination. <i>(This rate includes disposal cost)</i>	1,000,000	CY	\$6.50	\$6,500,000.00
5.0 Volume reduction through air curtain incineration.	2,500,000	CY	\$2.00	\$5,000,000.00
6.0 Loading and hauling of construction debris and/or mixed debris from Temporary Debris site to a permitted C&D recycling facility or any other designated Disposal Facility. <i>(This rate shall not include disposal cost)</i>				
A. 0 ≤ 20 miles	500,000	CY	\$3.50	
B. >20 ≤ 50 miles	500,000	CY	\$5.00	
C. >50 ≤ 80 miles	500,000	CY	\$7.00	
D. >80 ≤ 110 miles	500,000	CY	\$9.00	
E. >110 ≤ 200 miles	500,000	CY	\$10.00	
AVERAGE: (Item 6.0 A-E)			\$6.90	
AVERAGE (Item 6.0 A-E) x 500,000 CY =				\$3,450,000.00
TOTAL PRICE: (Items 1.0 - 6.0)				\$49,425,000.00

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

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

PART B – HOURLY RATES

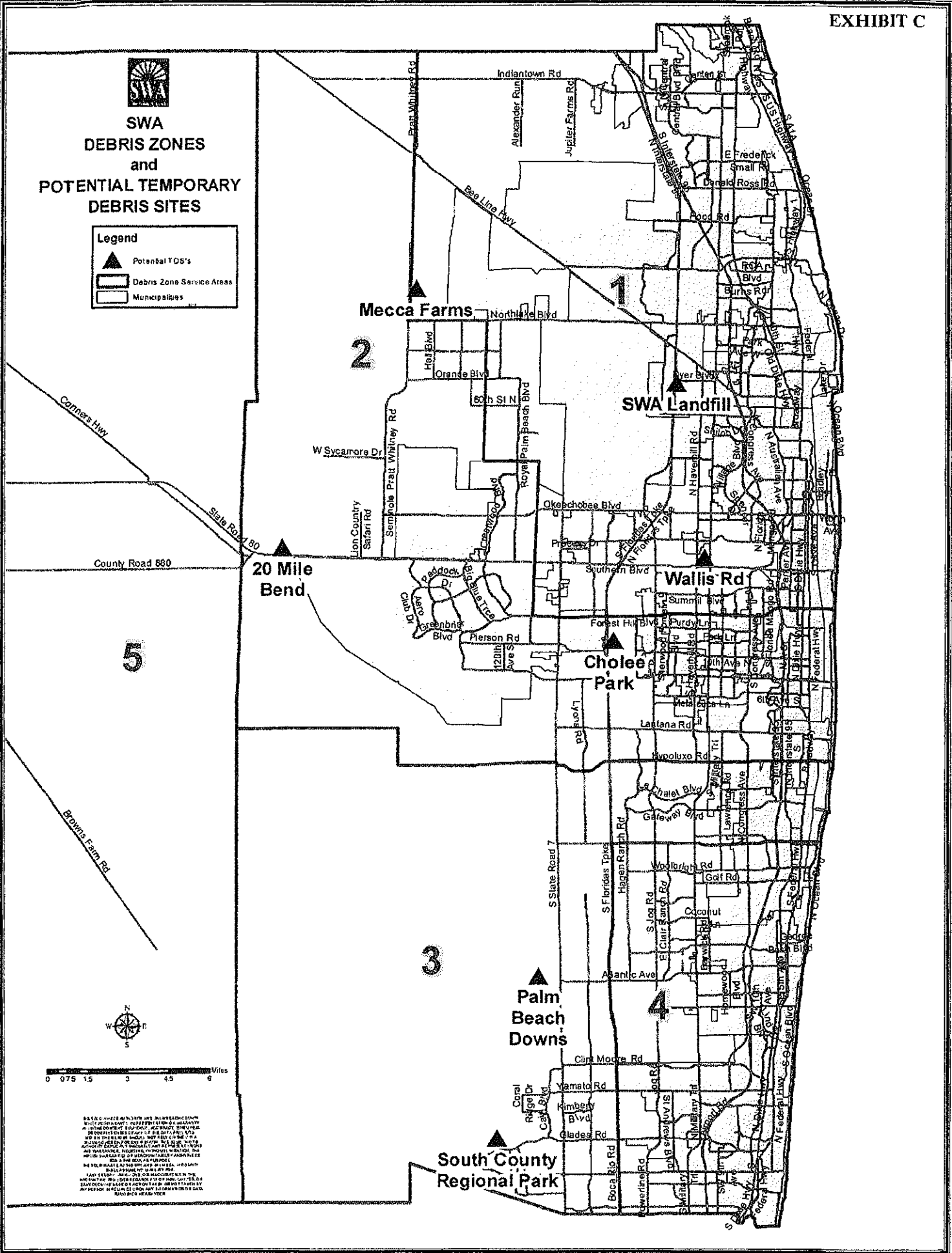
Debris Management Site Set-up and Closure and Debris Clearance for Access - optional use by County and other Governmental Entities			
Equipment and Labor Rates			
Equipment Type	Hourly Equipment Rate	Hourly Labor Rate	Total Hourly Rate
Bobcat Loader	\$42.00	\$22.00	\$64.00
Crew Foreman w/ Cell Phone and Pickup	\$13.00	\$39.00	\$52.00
Dozer, Tracked, D5 or similar	\$52.00	\$22.00	\$74.00
Dozer, Tracked, D6 or similar	\$90.00	\$22.00	\$112.00
Dozer, Tracked, D7 or similar	\$110.00	\$22.00	\$132.00
Dozer, Tracked, D8 or similar	\$120.00	\$22.00	\$142.00
Dump Truck, 18 CY-20 CY	\$42.00	\$22.00	\$64.00
Dump Truck, 21CY-30 CY	\$52.00	\$22.00	\$74.00
Generator and Lighting	\$14.00	\$0.00	\$14.00
Grader w/ 12' Blade	\$82.00	\$22.00	\$104.00
Hydraulic Excavator, 1.5 CY	\$75.00	\$22.00	\$97.00
Hydraulic Excavator, 2.5 CY	\$100.00	\$22.00	\$122.00
Knuckleboom Loader	\$82.00	\$22.00	\$104.00
Laborer w/ Chain Saw	\$6.00	\$30.00	\$36.00
Laborer w/ small tools, traffic control, flag person	\$2.00	\$30.00	\$32.00
Lowboy Trailer w/ Tractor	\$72.00	\$22.00	\$94.00
Operations Manager w/ Cell Phone and Pickup	\$13.00	\$45.00	\$58.00
Pickup Truck, .5 Ton	\$12.00	\$22.00	\$34.00
Soil Compactor 81 HP+	\$60.00	\$22.00	\$82.00
Soil Compactor to 80 HP	\$45.00	\$22.00	\$67.00
Soil Compactor, Towed Unit	\$22.00	\$22.00	\$44.00
Truck, Flatbed	\$22.00	\$22.00	\$44.00
Tub Grinder, 800 to 1,000 HP	\$482.00	\$22.00	\$504.00
Water Truck	\$65.00	\$22.00	\$87.00
Wheel Loader, 2.5 CY, 950 or similar	\$102.00	\$22.00	\$124.00
Wheel Loader, 3.5-4.0 CY, 966 or similar	\$120.00	\$22.00	\$142.00
Wheel Loader, 4.5 CY, 980 or similar	\$130.00	\$22.00	\$152.00
Wheel Loader-Backhoe, 1.0-1.5 CY	\$47.00	\$22.00	\$69.00



**SWA
DEBRIS ZONES
and
POTENTIAL TEMPORARY
DEBRIS SITES**

Legend

	Potential TDS's
	Debris Zone Service Areas
	Municipalities



SWA AND/OR ITS VENDORS SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. SWA AND/OR ITS VENDORS SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. SWA AND/OR ITS VENDORS SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.

LOCATION OF PUBLICLY OWNED DEBRIS MANAGEMENT SITES

Solid Waste Authority Temporary Debris Disposal Sites

SITE	LOCATION
Mecca Farms	Approximately 1 mile north of Northlake Blvd on the east side of Seminole Pratt Whitney Rd
Dyer Closed Landfill	South of Beeline Hwy on the west side of Haverhill Road
20 Mile Bend/Palm Beach Aggregates *	North side of Southern Blvd approximately 4 miles west of Lion Country Safari
Hooker Highway *	South side of Hooker Highway approximately 1 mile west of the intersection of State Road 80 and 441
Wallis Road	Located on the north side of Wallis Road between Haverhill Road and Military Trail
Cholee Park	West of Jog Road on the south side of Forest Hill Blvd across from the entrance to Okechee Park
Palm Beach Downs	Approximately ¼ mile west of 441 on West Atlantic Avenue
South County Regional Park	Take Glades Road west of 441 approximately 2 miles to Ponderosa Drive and turn north to the site

* Private Sites used in the past.

SMALL BUSINESS ENTERPRISE (SBE) PLAN

CONTRACTOR will retain the services of a certified SBE sub-contractor(s) to provide debris removal and disposal services following activation by the AUTHORITY.

CONTRACTOR will make every effort to meet at least 15% Small Business Enterprise (SBE) participation.

SOLID WASTE AUTHORITY

OF PALM BEACH COUNTY

7501 North Jog Road

West Palm Beach, Florida 33412

Telephone: 561-640-4000 • Fax: 561-640-3400



**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No.

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

Project: _____

Specific Work to be performed: _____

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

Method of Payment: _____

Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ Date: _____

AUTHORITY Signature: _____ Date: _____

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

<p style="text-align: center;">FEMA 322 PUBLIC ASSISTANCE GUIDE</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 *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

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

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

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

MOBILIZATION SCHEDULE

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

	Category 1 & 2	Category 3	Category 4	Category 5
Within 24 hours	40%	25%	20%	15%
Within 48 hours	80%	40%	35%	25%
Within 72 hours	100%	75%	50%	45%
Within 96 hours		100%	70%	60%
Within 7 days			90%	80%
Within 10 days			100%	90%
Within 14 days				100%

Revised May 1, 2012

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

EXHIBIT I

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve

EXHIBIT I

such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor

under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives,

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and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the

Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require

or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible 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 District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or

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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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom

this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the

prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

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

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

2. Where the prospective lower tier participant is unable to

EXHIBIT I

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

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

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

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

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

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

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

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

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

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

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

BUY AMERICA REQUIREMENTS

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

PERFORMANCE AND PAYMENT BOND

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

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Agreement dated _____, 20____ between Principal and Authority for Proposal of Hurricane/Disaster Debris Removal, Reduction and Disposal, **Agreement No. 13-251**, the Agreement being made a part of this bond by reference, in the time and in the manner prescribed in the Agreement, and;
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials and supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement, and;
3. Pays Authority all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Authority sustains because of a default by Principal under the Agreement, and;
4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement, and;
5. At completion of all work covered by Agreement and Final Payment by Authority to Principal then Principal will replace this Performance and Payment Bond with a Proposal Bond, in the amount of 5% of this Performance and Payment Bond, to be held by the Authority as a guarantee that Principal will provide to the Authority a Performance and Payment Bond in the amount of up to \$10,000,000 on the occasion of a subsequent Task Order in accordance with the above referenced Agreement;

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

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

EXHIBIT K

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

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

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

PRINCIPAL: _____

By: _____
Signature

WITNESS:

1. _____

Name: _____

2. _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

1. _____

Name: _____

2. _____

Title: _____

Address: _____

Telephone: _____

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

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

TAB 13



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: October 19, 2016

Agenda Item No.

Agenda Title: Extension of Emergency Management Standby Disaster Debris
Removal and Disposal Agreement with Phillips and Jordan, Inc.

- SPECIAL PRESENTATION/REPORTS CONSENT AGENDA
 BOARD APPOINTMENT OLD BUSINESS
 PUBLIC HEARING ORDINANCE ON ____ READING
 NEW BUSINESS
 OTHER: _____

Approved by Town Manager *Bonnie McMillan* Date: 10/13/2016
ACTING TOWN MGR
David Hunt
 David Hunt / Public Works Director

Originating Department: Public Works	Costs: None at this time Funding Source: N/A Acct. #: N/A <input checked="" type="checkbox"/> Finance _____	Attachments: - Emergency Authorization of Contract Extension - Ordinance Sections 2-245 & 2-250 - Resolution Authorizing Mayor to Execute Contract Extension with Phillips and Jordan, Inc. - Contract Extension Offer from Phillips and Jordan, Inc. - 2016 Contract Extension between SWA and Phillips and Jordan, Inc. - 2013 Contract between Town and Phillips and Jordan, Inc. - SWA Agreement No. 13-249
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u><i>JDH</i></u> Please initial one.

Summary Explanation/Background:

Note: Due to the imminent arrival of Hurricane Matthew, the State of Florida, Palm Beach County, and the Town of Lake Park began to operate under a State of Emergency. The Town

Manager executed the agreement with Phillips and Jordan, Inc. on October 4, 2016 (see attached) pursuant to Town Code of Ordinances, Chapter 2, Article V, Division 2, "Purchasing", Section's 2-245 and 2-250. This action was taken to ensure that the Town had a contractual agreement in place in the event that disaster debris overwhelmed Public Works' capacity to clear the streets. It was not necessary to utilize Phillips & Jordan's services for this event; however the purpose of this item is to have the contract approved at the regularly scheduled Commission meeting pursuant to Section 2-250. This one year contract extension should be formally executed and kept in place until a multi-year contract is provided by the Solid Waste Authority for piggybacking in 2017.

The Solid Waste Authority of Palm Beach County's (SWA) Agreement No. 13-249 with Phillips and Jordan, Inc. (Phillips & Jordan) is to provide disaster debris removal services to unincorporated areas of the County in the event of an emergency situation that overwhelms local service providers. This agreement has a clause that allows for cooperative sharing (piggy-backing) that the Town utilized in October of 2013. The Town executed this agreement with Phillips & Jordan, as well as with two other firms, so that back-up services would be available in the event that the Public Works Sanitation Division could not handle removal of debris generated by a large storm event. The term of the SWA agreement with Phillips & Jordan expired on August 20, 2016, with an option of extending the agreement until the year 2020.

The SWA opted for just a one year extension at its August 8, 2016 Board Meeting. Phillips & Jordan offered the same terms for this one year extension to the Town of Lake Park. The current agreement would remain in effect until August of 2017 while the SWA implements a new solicitation for disaster debris removal and disposal services.

In order to have emergency debris removal coverage while the SWA issues another RFP, it would be in the best interest of the Town to keep the current agreement active. It is anticipated that the Town will again piggy-back off the new long term contract that the SWA implements in 2017.

This agreement is non-binding and funding is not required unless and until the Town decides to use Phillips & Jordan's services after a severe storm event.

Recommended Motion: I move to authorize the Commission to approve the execution of the Contract Extension for Hurricane/Disaster Debris Removal, Reduction, and Disposal Services with Phillips & Jordan, Inc. that will have a new expiration date of August 20, 2017.



September 22, 2016

Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

RE: Mutual Aid Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal between Solid Waste Authority of Palm Beach County, and Phillips and Jordan, Inc.

Phillips and Jordan, Inc. (P&J) and the Solid Waste Authority of Palm Beach County have executed an amendment to Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal, Agreement No. 13-249, to extend the term of the Agreement for one additional year, as provided in the Agreement, effective August 21, 2016 through August 20, 2017.

Article 39 (Agreements with other Government Entities) of Agreement No. 13-249 states:

The CONTRACTOR 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 CONTRACTOR 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 re-solicitation.

I would like to offer to the Town of Lake Park, Fla., to extend its agreement with Phillips & Jordan, Inc. per Article 39 of Agreement No. 13-249, as amended, to extend the term from August 21, 2016, through August 20, 2017. This offer is made at the same terms and conditions stated in the referenced agreement.

Please return one fully executed original letter upon acceptance.

Sincerely,
PHILLIPS & JORDAN, INC.

Signature

Dudley Orr / Vice President
Printed Name / Title

Date

ACCEPTED: TOWN OF LAKE PARK, FLA.



Signature

John O. DiAugustino
Printed Name / Title

Town Manager

TOWN CODE OF ORDINANCES
CHAPTER 2, ARTICLE V, DIVISION 2, "PURCHASING"

Sec. 2-245. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency purchase: Procurement made in response to certain emergencies or when the delay caused by complying with all governing rules, regulations, and/or procedures would be detrimental to the health, safety and welfare of the town and/or its citizens or would create a hardship on the reasonable conduct of business in a timely fashion. Lack of planning, or funding surpluses, do not justify emergency purchases.

Sec. 2-250. Alternative source selection.

(c) *Emergency purchases.* The town manager or designee may make or authorize emergency purchases as defined herein. The appropriate department director of the originating department shall document in writing that such goods and/or services need to be purchased on an emergency basis. Emergency purchases above the town manager's purchasing authority shall be approved by the town commission at the next regularly scheduled commission meeting. Written determinations documenting emergency purchases shall be retained for a period of at least three years.

RESOLUTION NO. 48-10-16

A RESOLUTION OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXTEND THE EMERGENCY DISASTER DEBRIS MANAGEMENT SERVICES AGREEMENT FOR AN ADDITIONAL ONE-YEAR PERIOD WITH THE SPECIALTY DISASTER MANAGEMENT COMPANY OF PHILLIPS AND JORDAN, INC., TO ASSIST THE TOWN IN REMOVING DEBRIS 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 debris removal contractor to clear public property and public right-of-ways after a major hurricane or disaster and then haul the debris to an appropriate facility for disposal; and

WHEREAS, the SWA awarded three year contracts that expired on August 20, 2016 to five companies with the condition that the contractors agree 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, the Solid Waste Authority Board approved extending these contracts for an additional one (1) year period on August 8, 2016; and

WHEREAS, Phillips and Jordan, Inc. has offered an extension to the Agreement to the Town of Lake Park under the same terms and conditions of the original contract until its new expiration date of August 20, 2017; 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. 13-249 extension, and to have in place a standby agreement with Phillips and Jordan, Inc.

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. Phillips and Jordan, Inc. is hereby approved by the Town Commission of the Town of Lake Park to extend hurricane / disaster debris removal, reduction, and disposal services on a standby basis to the Town. 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.



September 22, 2016

Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

RE: Mutual Aid Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal between Solid Waste Authority of Palm Beach County, and Phillips and Jordan, Inc.

Phillips and Jordan, Inc. (P&J) and the Solid Waste Authority of Palm Beach County have executed an amendment to Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal, Agreement No. 13-249, to extend the term of the Agreement for one additional year, as provided in the Agreement, effective August 21, 2016 through August 20, 2017.

Article 39 (Agreements with other Government Entities) of Agreement No. 13-249 states:

The CONTRACTOR 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 CONTRACTOR 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 re-solicitation.

I would like to offer to the Town of Lake Park, Fla., to extend its agreement with Phillips & Jordan, Inc. per Article 39 of Agreement No. 13-249, as amended, to extend the term from August 21, 2016, through August 20, 2017. This offer is made at the same terms and conditions stated in the referenced agreement.

Please return one fully executed original letter upon acceptance.

Sincerely,
PHILLIPS & JORDAN, INC.

Signature

Dudley Orr / Vice President
Printed Name / Title

Date

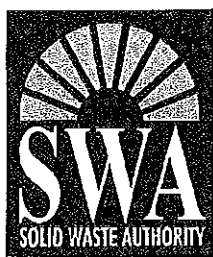
ACCEPTED: TOWN OF LAKE PARK, FLA.



Signature

John O. DiAgostino
Printed Name / Title

Town Manager



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

August 8, 2016

MEMORANDUM

TO: Vice Mayor Hal Valeche, Chair
and Solid Waste Authority Board Members

SUBJECT: Extension of Emergency Management Standby Disaster
Debris Removal and Disposal Agreements

RECOMMENDATION: Authorize Executive Director to extend Emergency
Disaster Debris Management Services Agreements for an
additional one-year period with the following: Phillips &
Jordan; Ashbritt, Inc.; Ceres Environmental; Crowder Gulf;
and Bergeron Emergency Services.

BACKGROUND:

The Solid Waste Authority (SWA) has been designated the agency responsible for debris removal and disposal operations under Palm Beach County's Comprehensive Emergency Management Plan. Experience has shown that the ability of SWA to provide timely and effective cleanups during past storm events is accomplished by having in place qualified debris contractors on standby agreements.

There is no cost to the Authority for extending these standby agreements. Each agreement clearly itemizes unit prices and hourly rates that the vendors will be reimbursed for various debris management activities performed.

The Emergency Management Standby Disaster Debris Removal and Disposal Agreements were originally awarded in August 2013 after a competitive RFP selection process and were for an initial 3-year term with a second term extension through April 2020. Staff currently recommends extending these contracts for an additional one (1) year period. Staff will be working in upcoming months to implement a new solicitation for disaster debris removal and disposal services. This new solicitation will provide contract start/end dates during non-hurricane season and ensure compliance with OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments), and 2 C.F.R. Part 200, the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Super Circular" or "Omni Circular"), effective December 2014.

ITEM S.D.
Page # 1/2

The Super Circular is a Federal government-wide framework for grants management and is intended to reduce administrative burden for non-federal entities receiving federal awards while reducing the risk of waste, fraud and abuse. The reform affects administrative aspects of Federal grants (e.g., how grants are awarded, managed, audited and closed-out). FEMA has adopted the provisions of the Super Circular in grant awards.

BUDGET IMPACT: There is no budget impact unless activated.

ATTACHMENTS: None.

REVIEWS:

Director:	_____	Date:	_____
Chief Officer:	<u>Mark Ligo</u>	Date:	<u>8/8/2016</u>
Chief Financial Officer: (as required)	_____	Date:	_____
Legal Counsel: (as required)	<u>Mirchip Boycenna</u>	Date:	<u>8/9/2016</u>
Managing Director:	<u>[Signature]</u>	Date:	<u>8/8/2016</u>
Executive Director:	<u>Markell</u>	Date:	<u>8/8/16</u>

**AMENDMENT #2 TO THE AGREEMENT FOR
HURRICANE / DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL BETWEEN
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY AND PHILLIPS AND JORDAN, INC.
DATED THE 21ST DAY OF AUGUST, 2013**

This Second Amendment, dated the 21st day of August, 2016 to the Agreement for the above written services, **Agreement No. 13-249**, between the **Solid Waste Authority of Palm Beach County** (hereinafter referred to as **AUTHORITY**), and **Phillips and Jordan, Inc.** (hereinafter referred to as **CONTRACTOR**).

Whereas, both parties desire to extend the term of the Agreement for one (1) additional year as provided in Article 1 of the original Agreement; and,

Whereas, **AUTHORITY**, desires **CONTRACTOR** to continue to perform the services as may be specifically designated and authorized by the **AUTHORITY**; and,


Now, therefore, in consideration of the foregoing and the mutual promises and covenants contained herein, and other good and valuable consideration, the parties hereto agree as follows:

In accordance with Article 1 – Effective Date, the **AUTHORITY** and the **CONTRACTOR** mutually agree to extend the Agreement for the above written services for a term of one (1) year effective **August 21, 2016 through August 20, 2017**.

All other provisions of the Agreement for the services as written above dated the 21st of August, 2013 shall remain in full force and effect and shall not be altered, amended or rescinded except as provided herein.

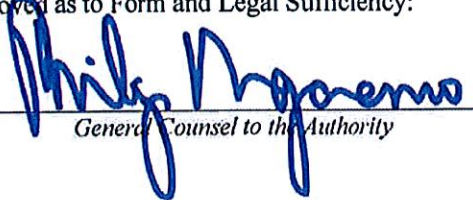
In Witness Whereof, the Executive Director of the **AUTHORITY** has made and executed this Amendment on behalf of the Solid Waste Authority of Palm Beach County and Phillips and Jordan, Inc. has executed this Amendment as of the day and year above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

Witness
1. 
2. 

By: 
Mark Hammond
Executive Director

Approved as to Form and Legal Sufficiency:


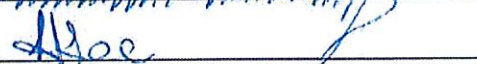
By: 
General Counsel to the Authority

PHILLIPS AND JORDAN, INC.:

Attest:

Assistant Corporate Secretary

By: 
Signature

Witness:
1. 
2. 

Name: Dudley Orr
Title: Vice President



RESOLUTION NO. 36-10-13

A RESOLUTION OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF ENGAGEMENT WITH THE EMERGENCY RESPONSE AND GENERAL CONTRACTING FIRM OF PHILLIPS AND JORDAN, INC., TO ASSIST THE TOWN IN REMOVING DEBRIS 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 debris removal contractor to clear public property and public right-of-ways after a major hurricane or disaster and then haul the debris to an appropriate facility for disposal; 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 contractors in order to have in place standby agreements with a short list of companies to provide timely and effective cleanup after a storm event; and

WHEREAS, The SWA team Selection Committee thoroughly reviewed all proposals and selected five companies and listed them in order of the committee’s ranking for a short list; and

WHEREAS, the SWA awarded contracts to all five companies with the condition that the contractors agree 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. 13-249, and to have in place a standby agreement with Phillips and Jordan, Inc.

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. Phillips and Jordan, Inc. is hereby approved by the Town Commission of the Town of Lake Park to provide hurricane / disaster debris removal, reduction, and disposal services on a standby basis to the Town, and the Mayor is hereby authorized to execute a letter of engagement between the Town and Phillips and Jordan, Inc.. 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 O'Rourke who moved its adoption. The motion was seconded by Vice-Mayor Glas-Castro and upon being put to a roll call vote, the vote was as follows:

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

The Town Commission thereupon declared the foregoing Resolution NO. 36-10-13 duly passed and adopted this 2 day of October, 2013.

TOWN OF LAKE PARK, FLORIDA

BY: James Dubois
JAMES DUBOIS
MAYOR

ATTEST:

Vivian Mendez
VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: Thomas J. Baird
THOMAS J. BAIRD
TOWN ATTORNEY



8/30/2013

Town of Lake Park
650 Old Dixie Hwy
Lake Park, FL 33403

RE: Mutual Aid Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal Services Agreement No. 13-249 between the Solid Waste Authority of Palm Beach County and Phillips and Jordan, Inc.

Phillips and Jordan, Inc. (P&J) has been awarded a contract for Hurricane/Disaster Debris Removal, Reduction and Disposal Services from The Solid Waste Authority of Palm Beach County for the term of 3 years commencing August 21, 2013 until August 20, 2016.

Article 39 (Agreements with other Government Entities) of the agreement (No. 13-249) states:

The CONTRACTOR 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 CONTRACTOR 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 re-solicitation.

I would like to extend an offer to the Town of Lake Park, Florida to enter into an exclusive agreement with P&J as allowed under the aforementioned Article 39 of said contract. This offer is made at the same terms and conditions stated in the referenced agreement.

Please return one fully executed original letter upon acceptance.

Sincerely,
PHILLIPS AND JORDAN, INC.

ACCEPTED: TOWN OF LAKE PARK



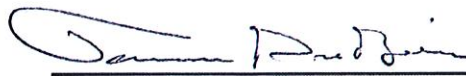
Signature

Dudley Orr / Vice President

Printed Name / Title

Oct. 29, 2013

Date



Signature

James DuBois Mayor

Printed Name / Title

10-3-13

Date



AGREEMENT

FOR

**HURRICANE / DISASTER DEBRIS
REMOVAL, REDUCTION AND DISPOSAL**

BETWEEN

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

PHILLIPS AND JORDAN, INC.

AGREEMENT NO. 13-249

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**HURRICANE / DISASTER DEBRIS
REMOVAL, REDUCTION AND DISPOSAL
AGREEMENT NO. 13-249**

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 **Phillips and Jordan, Inc.** (hereinafter referred to as **CONTRACTOR**), a North Carolina Corporation, whose Federal Employer Identification Number is 56-0694573.

WHEREAS, **AUTHORITY** requires the removal, reduction, and disposal of hurricane/disaster debris; and,

WHEREAS, **CONTRACTOR** 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 **August 21, 2013** and shall continue until **August 20, 2016** unless otherwise terminated as provided herein. The **AUTHORITY** shall have the option of extending the Agreement until **April 20, 2020** at the same terms and conditions with approval from the **AUTHORITY's** Governing Board. Such extension shall be in the form of a written Amendment to the Agreement executed by both parties. The continuance of this Agreement may be contingent upon a review of the fiscal (bankruptcy, etc), logistical (equipment availability, etc.), and moral (conviction for environmental crime, conviction for crime against a public entity, etc.) responsibility of the **CONTRACTOR** and a determination by the **AUTHORITY**, based on this review, of whether or not the **CONTRACTOR** continues to be a viable firm to provide the services described in this Contract.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

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

ARTICLE 3 - COMPENSATION

3.1 - GENERAL

AUTHORITY shall pay **CONTRACTOR** in accordance with Fee Schedule, Exhibit B, which is attached hereto and incorporated by reference as part of this Agreement. If needed, compensation may be negotiated as a lump sum or not-to-exceed amount for any Task Order containing a task covered by the scope of work of this Agreement but to which the Fee Schedule cannot readily be applied.

The **AUTHORITY** reserves the right to renegotiate Fee schedule, Exhibit B in the event there is a need for more than one **CONTRACTOR** to be mobilized.

CONTRACTOR shall submit semi-monthly invoices for services rendered. Invoices must reference the Task Order number. Invoices shall include a statement of progress and appropriate audit quality detail to satisfy FEMA requirements.

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

Each individual invoice shall be due and payable thirty (30) days after receipt of correct, fully documented, invoice by the AUTHORITY. 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

In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the AUTHORITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the AUTHORITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR.

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

ARTICLE 4 - INSURANCE

During the performance of the Services under this Agreement, CONTRACTOR 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 \$5,000,000 for each person and not less than \$5,000,000 for each accident and with property damage limits of not less than \$5,000,000 for each accident.
3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each accident, \$500,000 for each disease, and \$500,000 aggregate.
4. **Excess Liability** Insurance with limits of not less than \$10,000,000 for each occurrence and annual aggregate.

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.

CONTRACTOR shall furnish AUTHORITY **certificates of insurance** which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** written notice has been made to the AUTHORITY.

CONTRACTOR shall include AUTHORITY as an **additional insured** on the General Liability, Excess Liability, and Automobile Liability insurance policy required by the Agreement. All of CONTRACTOR'S sub-contractors shall be required to include AUTHORITY and CONTRACTOR as **additional insured** on their General Liability insurance policies.

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

The CONTRACTOR shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

ARTICLE 5 - STANDARD OF CARE

CONTRACTOR 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 CONTRACTOR shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

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

6.2 INDEMNIFICATION

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

6.3 SURVIVAL

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

ARTICLE 7 - INDEPENDENT CONTRACTOR

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR 'S sole direction, supervision, and control. The

CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR 'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

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

The CONTRACTOR shall not pledge the AUTHORITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 8 - AUTHORITY TO PRACTICE

The CONTRACTOR 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, CONTRACTOR will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

ARTICLE 10 - SUB-CONTRACTING

The AUTHORITY reserves the right to accept the use of a sub-contractor or to reject the selection of a particular sub-contractor and to inspect all facilities of any sub-contractor to perform properly under this Agreement. Rejection of any sub-contractor will be based on, but not limited to, negative references, insufficient resources, or conviction of a Public Entity Crime.

If a sub-contractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the sub-contractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new sub-contractor by the AUTHORITY.

ARTICLE 11 - FEDERAL AND STATE TAXES

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

ARTICLE 12 - AVAILABILITY OF FUNDS

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

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONTRACTOR that is available in the files of the AUTHORITY.

ARTICLE 14 - DEFAULT

The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR 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 CONTRACTOR, the AUTHORITY may procure goods and/or services similar to those terminated, and the CONTRACTOR shall be liable for any excess costs incurred due to this action.

If it is determined that the CONTRACTOR was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the CONTRACTOR), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

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 CONTRACTOR, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONTRACTOR has the right to withdraw, without adverse action, from the entire Agreement.

Unless directed differently in the Notice of Termination, the CONTRACTOR shall incur no further obligations in connection with the terminated work, and shall stop work to the extent specified and on the date given in the Notice of Termination. Additionally, unless directed differently, the successful CONTRACTOR shall terminate outstanding orders and/or subcontracts related to the terminated work.

Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination.

ARTICLE 16 - UNCONTROLLABLE FORCES

Neither the AUTHORITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, 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 CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes (Public Records Law) for records related to this Agreement.

ARTICLE 18 - NON-DISCRIMINATION

CONTRACTOR assures and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression.

ARTICLE 19 - WAIVER

A waiver by either AUTHORITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further 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 20 - 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 21 - ENTIRETY OF AGREEMENT

The AUTHORITY and the CONTRACTOR 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 CONTRACTOR 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 22 - MODIFICATION

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

ARTICLE 23 - SUCCESSORS AND ASSIGNS

AUTHORITY and CONTRACTOR 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. CONTRACTOR shall not assign this Agreement without the express written approval of the AUTHORITY via executed amendment.

ARTICLE 24 - CONTINGENT FEES

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

ARTICLE 25 - TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the 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 contractors. The AUTHORITY shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 26 - OWNERSHIP OF DOCUMENTS

CONTRACTOR shall be required to cooperate with other contractors 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 27 - ACCESS AND AUDITS

CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency sub-grantee as required by FEMA'S 322 Public Assistance Guide, page 114, as amended, incorporated in this Agreement as Exhibit G. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the CONTRACTOR'S place of business.

ARTICLE 28 - NOTICE

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

As To AUTHORITY

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

As To CONTRACTOR

Phillips & Jordan, Inc.
6621 Wilbanks Road
Knoxville, Tennessee 37912
Attention: Dudley Orr, Vice President
Office No.: 828-479-3371 Fax. No.: 828-479-3010

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

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

ARTICLE 29 - CONTRACT ADMINISTRATION

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

ARTICLE 30 - KEY PERSONNEL

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

Dudley Orr, Vice President
8940 Gall Blvd., Zephyrhills, Florida 33541
Office No.: 828-479-3371 E-Mail: dorr@pandj.com

ARTICLE 31 - CONFIDENTIALITY

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

ARTICLE 32 - ESCALATION CLAUSE

The AUTHORITY acknowledges the fluctuating nature of prices. Therefore, on each annual anniversary date of the Agreement, the Fee Schedule, Exhibit B may be adjusted based on the following formula of indices:

Fifty (50) percent of the price will be adjusted by the average monthly percentage change over the twelve (12) month period ending the May immediately preceding the date for which the price index adjustment is effective in the Consumer Price Index - Urban Wage Earners and Clerical Workers - U.S. City Average - Private Transportation (Series ID CWUR0000SAT1, not seasonally adjusted) as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

Fifty (50) percent of the price will be adjusted by the percentage change in the Average Hourly Earnings of Production Workers (Series ID CEU200000008) as published by the Bureau of Labor Statistics of the U.S. Department of Labor over the one year period ending the May immediately preceding the date for which the price index adjustment is effective.

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

ARTICLE 33 - ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

The CONTRACTORS have entered into contingent Agreements with the AUTHORITY for Hurricane/Disaster Debris Removal, Reduction and Disposal. The Agreements awarded will be activated on an as needed basis as solely determined by the AUTHORITY. The AUTHORITY intends to activate the CONTRACTORS in the order of the Selection Committee ranking, as best meets the needs of the AUTHORITY. The AUTHORITY reserves the sole right to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action.

ARTICLE 34 - TASK ORDER/PERFORMANCE

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

ARTICLE 35 - BONDS

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

ARTICLE 36 - 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. CONTRACTOR'S submitted Plan showing how he/she will assist the AUTHORITY in achieving this goal is incorporated into this Agreement as Exhibit E. 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 37 - SCRUTINIZED COMPANIES

As provided in F.S. 287.135, by entering into any Agreement with the AUTHORITY, or performing any work in furtherance hereof, CONTRACTOR hereby certifies that CONTRACTOR and CONTRACTOR'S affiliates, suppliers, subcontractors 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 CONTRACTOR, this CONTRACTOR 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.A. 287.135.

ARTICLE 38 - OFFICE OF INSPECTOR GENERAL

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

ARTICLE 39 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

The CONTRACTOR 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 CONTRACTOR 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 40 - 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 I, which is attached hereto and incorporated by reference as part of this Agreement. The term "contractor," as used in Exhibit I, shall apply to and mean the CONTRACTOR, who may also be referred to in Exhibit I as the "prime contractor", "bidder", "proposer", "prospective primary participant", "prospective participant", "participant" or the like. The CONTRACTOR will perform the duties and obligations of the other contracting party regardless of the description or label used in FHWA Form 1273, Exhibit I.

The CONTRACTOR shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or "linked" to a particular Federal highway. Wage rate tables may be found at www.dot.state.fl.us/construction. Said wage rate tables are incorporated into and made a part of this Agreement by reference.

ARTICLE 41 - BUY AMERICA REQUIREMENTS

The CONTRACTOR agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), 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 J, which is attached hereto and incorporated by reference as part of this Agreement. CONTRACTOR shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, FHWA, and FEMA, to the extent applicable.

ARTICLE 42 - 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 CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13.) Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.

The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR'S receipt of payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its

subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.

The CONTRACTOR shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONTRACTOR shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation's (FDOT) website found at www.dot.state.fl.us/equalopportunityoffice. Audits may be conducted to review payments to DBE subcontractors. The CONTRACTOR will fully cooperate with the AUTHORITY, FDOT, FHWA or FEMA regarding the monitoring of subcontractors and payments made thereto.

ARTICLE 43 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONTRACTOR shall verify that neither the CONTRACTOR, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONTRACTOR must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. The CONTRACTOR acknowledges and affirms that by signing and submitting its bid or proposal, the CONTRACTOR made the certification described in Section X of the attached FHWA Form 1273, Exhibit I. CONTRACTOR'S certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

ARTICLE 44 - ACCESS TO RECORDS AND THEIR RETENTION

This provision shall supplement Article 27 of the Agreement. The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONTRACTOR agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.

The CONTRACTOR shall make all of its books, records, and other documents related, in any manner to its or its subcontractors' performance of the Agreement, available to the Authority and any other funding entity (e.g., FDOT, 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 CONTRACTOR'S place of business or if CONTRACTOR'S place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONTRACTOR shall also require its subcontractors to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONTRACTOR.

ARTICLE 45 - AUDIT REQUIREMENTS

This provision shall supplement Article 27 of the Agreement. The CONTRACTOR agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONTRACTOR agrees that it will comply 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 CONTRACTOR'S performance of the Agreement.

ARTICLE 46 - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The CONTRACTOR 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 47 - AMERICANS WITH DISABILITIES ACT

The CONTRACTOR 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 48 - COMPLIANCE WITH TITLE VI, TITLE VII AND OTHER FEDERAL LAWS AND REGULATIONS

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

ARTICLE 49 - CONVICT LABOR PROHIBITION

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

ARTICLE 50 - 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 CONTRACTOR confirms that by signing and submitting a bid or proposal for the work covered by this Agreement, it made the certification described in Section XI of the attached FHWA Form 1273, Exhibit I.

IN WITNESS WHEREOF, the Solid Waste Authority of Palm Beach County, and Phillips and Jordan, Inc. has executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

Witness:

1. Barbara Howell
2. Henry Koduri

By: Mark Hammond
Mark Hammond
Executive Director

Approved as to Form and Legal Sufficiency:

By: [Signature]
General Counsel to the Authority

PHILLIPS AND JORDAN, INC.:

Attest:

Corporate Secretary

By: [Signature], VP
(Corporate Seal)

Witness:

1. [Signature]
2. Susan L Williams

Name: Max G. Morton 8/20/13
Title: Vice President

STATEMENT OF WORK

1. Project Description and Requirements

The CONTRACTOR shall remove and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible garbage) from public property and public right-of-ways, and to setup and operate Temporary Debris Sites in Palm Beach County, Florida, immediately after a hurricane or other disaster.

The CONTRACTOR submits he/she is capable of efficiently removing large volumes of disaster-generated debris from a large area in a timely and cost-effective manner and lawfully disposing of all debris. The CONTRACTOR shall assemble, direct, and manage a work force that can complete the debris management operations in 120 days or less. The duration of effort/completion dates of all tasks will be determined jointly by the AUTHORITY and CONTRACTOR. This determination will be set in writing in appropriate Task Order(s).

The CONTRACTOR shall perform all work in accordance with FEMA guidelines in order to maximize recovery of reimbursable expenses. This task shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished.

The CONTRACTOR may be required, at the AUTHORITY'S discretion, to be under the direction of an agent of the AUTHORITY.

While intended to cover debris management needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to Palm Beach County, Florida. The planning standards used for this Agreement are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida.

The AUTHORITY requires that the Proposal Bond of CONTRACTOR be in effect for the entire term of the Agreement until a debris generating event occurs and the CONTRACTOR is called to active duty. At the start of any and all active duty periods the Proposal Bond will be returned to the CONTRACTOR in exchange for the Performance and Payment Bond which will need to be in effect for the duration of the active duty period. Under no circumstances shall the CONTRACTOR start work until he/she has supplied an acceptable Performance and Payment Bond. Refer to the Agreement, Article 35 - Bonds for additional bonding requirements.

2. Background**2.1 Introduction**

The AUTHORITY'S disaster recovery planning includes considerations for removing and processing the volumes and types of debris expected to be generated by a major disaster such as a hurricane and the procedures for disposing of that debris. The planning approach is formulated in part on the concept of strategic pre-positioning of plans and resources necessary for timely, coordinated recovery operations, including removal of debris from public property and right-of-ways throughout Palm Beach County using a combination of county, municipal, and CONTRACTOR forces.

The AUTHORITY will execute multiple Agreements to carry out the debris removal and disposal work for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the

AUTHORITY in the aftermath of a major disaster throughout Palm Beach County. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and to cover the expenses associated with a major recovery operation prior to the initial AUTHORITY payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel, comprehensive debris removal and volume reduction operations plans, and demonstrable experience in major disaster recovery projects.

The Agreement will be a contingency Agreement that will be activated only in the face of an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until the Agreement is activated either in anticipation of a natural disaster or immediately after such disaster.

The CONTRACTOR will be required to participate in certain AUTHORITY directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the AUTHORITY.

2.2 Planning Standard for Debris Removal and Disposal

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

2.3 Debris Management

Planning for debris management operations is a function of the AUTHORITY as a supporting agency to the Palm Beach County Department of Engineering and Public Works. The AUTHORITY'S Emergency Management Coordinator will direct the debris removal and disposal operations.

Each CONTRACTOR will serve as a General CONTRACTOR for the purpose of debris removal and disposal operations, and will be able to use his/her own and subcontractor resources to meet the obligations of the Agreement. It is anticipated that the CONTRACTOR will use both local and non-local subcontractors. Notwithstanding, the CONTRACTOR will make every effort to use fully qualified and properly equipped local firms, including Small Business Enterprises (SBE), to the maximum extent practicable.

When a major disaster occurs or is imminent, the AUTHORITY will contact the CONTRACTOR to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will generally be limited to debris in, upon, or brought to county residential private and public streets and roads, right-of-ways, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations, consistent with the AUTHORITY'S Debris Management Plan located on AUTHORITY'S website at www.swa.org/site/hurricane/plans_and_documents. Disposal of debris will be at AUTHORITY approved Temporary Debris Sites or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all Temporary Debris Sites.

When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order to begin planning for the operations and

mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane/disaster.

The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.

The AUTHORITY will make every effort to identify strategically located Temporary Debris Sites throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional Temporary Debris Sites will be identified as needed.

The CONTRACTOR will operate the Temporary Debris Sites and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate Temporary Debris Sites. The CONTRACTOR is responsible for all activity at Temporary Debris Sites operated by their subcontractor and must have an employee on site at all times to oversee daily operations. The locations of publicly owned sites currently under consideration are shown on Exhibit C. Additional sites (privately owned mostly) may become available as plans develop.

The AUTHORITY may also establish designated homeowner drop-off sites. The CONTRACTOR will be responsible for removing all eligible debris from those sites daily at the direction of the Emergency Management Coordinator or designee.

Curbside segregation of debris and disaster-generated or related wastes will be an element of the AUTHORITY'S disaster recovery program. The debris removal and disposal CONTRACTOR will be required to aid in the segregation and waste stream management processes. Any Household Hazardous Waste (HHW) encountered by the debris removal CONTRACTOR is to be set aside. HHW disposal will be the responsibility of the resident. The AUTHORITY will designate HHW drop-off locations.

The following items are considered HHW for the purpose of this Agreement:

1. Used Oil
2. Batteries
3. Paint
4. Aerosol spray cans
5. Pesticides
6. Antifreeze
7. Fluorescent light bulbs
8. Propane tanks (household size)

The CONTRACTOR will setup a lined containment area and separate any HHW inadvertently delivered to a Temporary Debris Site.

Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will be set aside for collection and disposal by a Hazardous Materials Removal and Disposal Contractor who will be selected by the AUTHORITY.

Putrescible residential garbage will be collected by AUTHORITY franchise waste haulers and is not to be collected or transported by CONTRACTOR forces.

3. Scope of Work/Overview

This section is divided into three (3) subsections:

- 3.1 **Debris Removal and Disposal Operations** from residential public and private streets, roads and right-of-ways and delivered to a Temporary Debris Site.
- 3.2 **Temporary Debris Site Operations** which includes daily operations as well as reclamation of the site to its pre-storm condition or as directed by the AUTHORITY Emergency Management Coordinator.
- 3.3 **Processing, Loading and Hauling Material** from Temporary Debris Site to final destination.

Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, time-frame for completion, rates to be used, etc. Any job with requirements or rates not covered by this Agreement will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(s) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest.

The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.

The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.

The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY Emergency Management Coordinator prior to issuance of the first Task Order.

The quantity of work required to complete the Agreement is estimated. The actual effort required may be more or less than the estimated amount reflected in the RFP No. 13-240/MRK. Payment will be made in accordance with the Fee Schedule, Exhibit B, which is attached hereto and incorporated by reference as part of the Agreement. The output will be verified by the AUTHORITY Emergency Management Coordinator in the daily operational report. Should hourly rates be used to pay for certain equipment then preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.

The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no additional cost to the AUTHORITY.

The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.

The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

3.1 Debris Removal and Disposal Operations

3.1.1 General

The purpose of this section is to define the requirements for debris removal and disposal operations after any catastrophic disaster within Palm Beach County. The AUTHORITY intends to designate zones for collection of disposal debris. CONTRACTORS will be tasked with a service area(s) for this specific work.

For work performed on a Time and Materials basis, all hourly equipment rates shall include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, and all other costs associated with the equipment including labor and operator.

3.1.2 Services

The CONTRACTOR shall provide equipment, operators and laborers for debris removal operations. The CONTRACTOR shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, and repairs) all equipment under this Agreement.

All rates are to include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging and all other costs.

The work shall consist of clearing and removing disaster generated debris as directed by the AUTHORITY Emergency Management Coordinator. CONTRACTOR shall provide collection equipment the day following a natural disaster or as directed by the AUTHORITY and shall provide equipment sufficient to collect a minimum of 50,000 cubic yards of debris per day within ten (10) calendar days of collection commencement (AUTHORITY'S natural disaster cleanup records show that ten (10) days' following disaster, 95,000-126,000 cubic yards of debris was collected per day). Failure to provide sufficient equipment necessary to collect required amount may result in the AUTHORITY entering into a separate agreement with another contractor for debris collection services.

3.1.2.1 Collection of Storm Generated Residential Vegetation and Construction and Demolition Debris

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

Work may include:

1. First pass to clear debris from emergency evacuation routes, access roads to critical facilities and all primary roadways.
2. Clearing debris from residential private and public road right-of-ways.
3. Loading the debris.
4. Hauling the debris to an approved Temporary Debris Site or an authorized landfill.
5. Dumping the debris at the Temporary Debris Site or at an authorized landfill.

Debris delivered to a Temporary Debris Site or authorized landfill will be paid based on the price per cubic yard according to the Fee Schedule, Exhibit B.

3.1.2.2 Hourly Rate Clearing

From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:

1. Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.
2. Perform emergency removal of debris if needed for life-saving measures.
3. Conduct daily briefings with debris managers and other officials to update progress and discuss issues.
4. Develop a traffic control plan along potential haul routes and at debris management and disposal sites.

The CONTRACTOR shall not move from one designated Collection Service Area to another area without prior approval from the AUTHORITY Emergency Management Coordinator or designee. CONTRACTORS and/or subcontractors that move to a designated Collection Service Area without prior AUTHORITY approval may be terminated immediately. The AUTHORITY reserves the right to relocate CONTRACTOR to other Collection Service Areas based on need and ability to perform required work at an acceptable level. The AUTHORITY reserves the right to immediately terminate CONTRACTOR and any subcontractor who fails to provide service in accordance to guidelines set forth by FEMA, FHWA Form 1273, attached hereto as Exhibit I, and the AUTHORITY.

The AUTHORITY or designee shall forward all claims of damage to the CONTRACTOR daily. CONTRACTOR shall provide all contact information, including name, phone number, cellular phone number, fax number and email address, for personnel responsible for resolving all claims of damage. CONTRACTOR must respond to all claims of damage within 24 hours and resolve within ten (10) calendar days. Mailboxes must be repaired or replaced within two (2) calendar days. CONTRACTOR is responsible for all damage caused by his crew and/or subcontractors in the performance of debris removal.

In the event the CONTRACTOR fails to repair damages as a result of the CONTRACTOR'S equipment failure or negligence within the time provided within this Agreement, the AUTHORITY or designee may arrange for the repairs and assess the CONTRACTOR for the cost of the repairs and any applicable administrative charges. Any disputes as to damage responsibility will be presented to the Emergency Management Coordinator or designee for review. The decision of the Emergency Management Coordinator or designee will be final.

3.1.3 Equipment

All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment and be equipped with a tailgate that will effectively contain the debris

during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:

1. Fencing must be permanently attached to one side of the truck bed.
2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
3. Fencing must extend to the bottom of the bed.
4. After loading, bottom of fencing shall be tight against the bed of the truck and secured at a minimum of two locations.
5. Solid iron metal bars must be secured to both sides of the fencing.
6. There shall be no hand loaded equipment allowed.

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

All trucks and trailers utilized in hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. If installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and remarked. All extensions to the bed are subject to acceptance or rejection by the AUTHORITY Inspector.

Trucks or equipment designated for use under this Agreement shall not be used for any other work during working hours. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement. Under no circumstance will the CONTRACTOR mix debris hauled for others with debris hauled under this Agreement. Failure to comply will result in no payment to CONTRACTOR and operator and vehicle will be declared ineligible to provide any additional emergency debris collection services. Any and all unapproved changes to placard will result in no payment to CONTRACTOR and operator and vehicle will be declared ineligible to perform any additional emergency debris collection services.

3.1.4 Securing Debris

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

3.1.5 Equipment Signage

Prior to commencing operations, the AUTHORITY or designee shall affix to each piece of equipment, signs or markings indicating the Owner Operator's name and a unique equipment identification number.

One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Each operator shall keep AUTHORITY certification with them at all times. Placards must remain on both sides of equipment.

3.1.6 Other Considerations

The CONTRACTOR shall assign and provide an Operations Manager (OM) to the AUTHORITY Debris Management Center to serve as the principal liaison between the AUTHORITY Emergency Management Coordinator or designee and the CONTRACTOR'S forces. The assigned OM must be knowledgeable of all facets of the CONTRACTOR'S operations and have authority in writing to commit the CONTRACTOR. The OM shall be on call 24 hours per day, seven (7) days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for onsite accommodations. This linkage shall provide immediate contact via cell phone, Fax machine, and have Internet capabilities. The OM will participate in daily meetings and disaster exercises, functioning as a source to provide essential element information. The OM will report to the AUTHORITY Emergency Management Coordinator or designee. This position will not require constant presence; rather the OM will be required to be physically capable of responding to the AUTHORITY Emergency Management Coordinator within 30 minutes of notification.

The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.

The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

Payment for debris hauled will be based on the quantity of debris hauled in cubic yards. Debris hauled to a Temporary Debris Site will require a validated load ticket. Drivers will be given an electronic or paper load tickets at the loading site by an AUTHORITY loading site monitor. The quantity of debris hauled will be estimated in cubic yards at the Temporary Debris Site by an AUTHORITY Temporary Debris Site monitor. The estimated quantity will be recorded on the electronic or paper load ticket. The AUTHORITY Temporary Debris Site monitor will retain one copy of the paper load ticket and the driver will retain the remaining copies of the load ticket. Debris being hauled to a permanent landfill will be paid based on cubic yards recorded on an approved electronic or paper load ticket. Payment will be made against the CONTRACTOR'S invoice once site monitor and CONTRACTOR load tickets and/or scale tickets match. Load tickets not properly completed and signed will not be paid.

3.2 Temporary Debris Site Operations

3.2.1 General

The purpose of this section is to define the requirements for Temporary Debris Site Operations after any catastrophic disaster within Palm Beach County.

The CONTRACTOR shall use only Temporary Debris Sites designated by the AUTHORITY Emergency Management Coordinator.

The Temporary Debris Site foreman shall direct all dumping operations. Different types of debris shall be kept in separate piles at the Temporary Debris Site. At a minimum, one flag person shall be posted at each Temporary Debris Site for traffic control and to direct unmixed loads to proper location (by debris

type) to be dumped. CONTRACTOR shall be responsible for sorting and proper placement of all loads not dumped in appropriate location which results in mixing the once separated debris at no charge to the AUTHORITY.

The CONTRACTOR shall begin grinding vegetative debris within five (5) calendar days of Temporary Debris Site opening date and removing mulch/wood chips within ten (10) calendar days of site opening date. The CONTRACTOR shall begin removal of Construction and Demolition/mixed debris from Temporary Debris Site to an approved final destination within five (5) days of site opening date.

3.2.2 Temporary Debris Site Services

3.2.2.1 Site Setup/Preparation and Site Closeout/Restoration

Site setup/preparation and site closeout/restoration shall be compensated on a time and materials basis in accordance with the hourly rates provided in the Fee Schedule, Exhibit B, which is attached hereto and incorporated by reference as part of this Agreement. Site set-up preparation and closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, limerock or crushed concrete access roads, sodding, and any other similar activity necessary to make the site usable for its intended purposes and to return the site to its original condition. .

3.2.2.2 Temporary Debris Site Operations and Material Processing

Temporary Debris Site operations and material processing shall be compensated in accordance with the unit prices provided in the Fee Schedule, Exhibit B. The CONTRACTOR shall provide equipment, operators, and laborers for Temporary Debris Site operations as specified by Task Order. Unit prices provided in the Fee Schedule, Exhibit B, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance) all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each Temporary Debris Site. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the debris site. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, and any other costs. The work shall consist of managing the operations of a Temporary Debris Site and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator.

The AUTHORITY plans to use two types of Temporary Debris Sites.

1. Vegetative Temporary Debris Sites will be devoted to the reduction of clean woody debris by either burning or grinding. The AUTHORITY expects the material to be recycled and or beneficially re-used if processed by grinding.
2. Depending upon the size and type of devastation the AUTHORITY may require a separate Construction & Demolition (C&D) staging area, mixed debris staging area and a separate Household Hazardous Waste staging area. The AUTHORITY requests that CONTRACTOR implements recycling and or reduction programs to minimize the quantity of construction debris material to be land filled.

Material coming into the Vegetative or C&D Temporary Debris Sites will be measured and paid for by the cubic yard according to the Fee Schedule, Exhibit B. Material removed and transported from a C&D Temporary Debris Site will be measured and paid by the cubic yard according to the Fee Schedule, Exhibit B.

Locations of all Temporary Debris Sites will be provided by the AUTHORITY. The AUTHORITY Emergency Management Coordinator must approve site improvements before work begins and any costs, other than those in the Fee Schedule, Exhibit B, that might have been negotiated under a Task Order shall be documented for payment.

Material processed at a Temporary Debris Site by either grinding or burning will be measured using cubic yards from incoming load tickets. Material entering a Publicly Owned Debris Management Site, Exhibit D will be deposited in manageable piles.

3.2.3 Reporting

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

1. Contractor's Name
2. Contract Number
3. Daily and cumulative hours for each piece of equipment, *if appropriate*
4. Daily and cumulative hours for personnel, by position, *if appropriate*
5. Volumes of debris handled

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

3.2.4 Other Considerations

The CONTRACTOR shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. In the event a Temporary Debris Site must be closed due to CONTRACTOR equipment or operational failures, CONTRACTOR shall be liable for liquidated damages in the amount of \$25,000 per day for every day the site has to remain closed.

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

The AUTHORITY provides support to Palm Beach County Government for Debris Management, including the clearance (moving debris from the middle of the road, etc.) of debris from right-of-ways and public property. Palm Beach County intends to perform debris clearance for access with its own forces or under existing contractual Agreements between the County and local firms. However, in a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner.

This debris clearance is to be considered supplemental and optional service. It is anticipated that debris clearance activities would be conducted, if needed, on a time and material basis using the rates in the Fee Schedule, Exhibit B.

3.3 Processing, Loading and Hauling Material

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

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

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch and construction/demolition debris is disposed, to include address/GPS location.

4. Miscellaneous Requirements

4.1 Temporary Debris Site Foreman

The Temporary Debris Site foreman must be an employee of the CONTRACTOR and is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety.

The Temporary Debris Site foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Emergency Management Coordinator or designee.

4.2 Temporary Debris Site Night Foreman

The Temporary Debris Site night foreman must be an employee of the CONTRACTOR and is responsible for managing all night operations approved by the AUTHORITY.

The Temporary Debris Site night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the AUTHORITY Emergency Management Coordinator or designee.

4.3 Temporary Debris Site Management Plan

Once the Temporary Debris Site is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.

Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:

1. Access to site
2. Site preparation - clearing, erosion control, and grading
3. Traffic control procedures
4. Safety
5. Segregation of debris
6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures

8. Location of existing structures or sensitive areas requiring protection

4.4 Inspection Tower

The CONTRACTOR shall construct an inspection tower at each Temporary Debris Site within three (3) calendar days of natural disaster. The tower shall be constructed using pressure treated wood or steel scaffold. The floor elevation of the tower shall be 10-feet above the existing ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Inspection towers must provide a dry area for employees and meet all FEMA OSHA requirements.

4.5 Grinding Operation

The CONTRACTOR shall have grinders on site and in operation within 72 hours of natural disaster. Failure to provide grinder(s) on site in operation within 72 hours shall result in liquidated damages of \$10,000 per day. There shall be no period longer than 24 hours in which grinding activity may stop due to equipment or operational failure. Failure to provide back-up equipment within 24 hours shall result in a \$2,000 fine per hour per approved hours of grinding operation per day until grinding activity resumes.

4.6 Household Hazardous Waste Containment Area

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

5. Performance of Contractor

It is the intent of this Agreement to ensure that the CONTRACTOR provides a quality level of services. To this end, all complaints received by the Emergency Management Coordinator or designee, and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.

The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:

1. Failure to open pre-storm identified sites within three (3) calendar days after being tasked by the AUTHORITY shall result in liquidated damages of \$10,000 per day for each day not opened.
2. Closure of Temporary Debris Site due to CONTRACTOR equipment or operational failures shall result in liquidated damages of \$25,000 per day, for each day site must remain closed.

Failure to provide back-up grinders within 24 hours of equipment breakdown shall result in liquidated damages of \$2,000 fine per hour per approved grinding hours of operation per day.

CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each of the following infractions:

1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.
2. Loads not properly tarped or otherwise covered.

3. Mixing debris hauled from other sources with debris hauled under this Agreement.
4. Mixing vegetation debris with C & D material.

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

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

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

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FEE SCHEDULE

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

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated Temporary Debris Site.				
A. Vegetation	2,500,000	CY	\$ 8.25	\$ 20,625,000.00
B. Construction Debris / Mixed Debris	500,000	CY	\$ 8.25	\$ 4,125,000.00
2.0 Temporary Debris Site operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and phase I reclamation.	3,000,000	CY	\$ 2.25	\$ 6,750,000.00
3.0 Processing of debris through grinding and/or chipping.	2,500,000	CY	\$ 2.25	\$ 5,625,000.00
4.0 Loading, hauling and disposing wood chips to final destination. <i>(This rate includes disposal cost)</i>	1,000,000	CY	\$ 8.00	\$ 8,000,000.00
5.0 Volume reduction through air curtain incineration.	2,500,000	CY	\$ 0.50	\$ 1,250,000.00
6.0 Loading and hauling of construction debris and/or mixed debris from Temporary Debris site to a permitted C&D recycling facility or any other designated Disposal Facility. <i>(This rate shall not include disposal cost)</i>				
A. 0 ≤ 20 miles	500,000	CY	\$ 3.00	
B. >20 ≤ 50 miles	500,000	CY	\$ 4.00	
C. >50 ≤ 80 miles	500,000	CY	\$ 6.00	
D. >80 ≤ 110 miles	500,000	CY	\$ 6.25	
E. >110 ≤ 200 miles	500,000	CY	\$ 6.50	
		AVERAGE: (Item 6.0 A-E)	\$ 5.15	
AVERAGE (Item 6.0 A-E) x 500,000 CY =				\$ 2,575,000.00
TOTAL PRICE: (Items 1.0 - 6.0)				\$ 48,950,000.00

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

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

PART B – HOURLY RATES

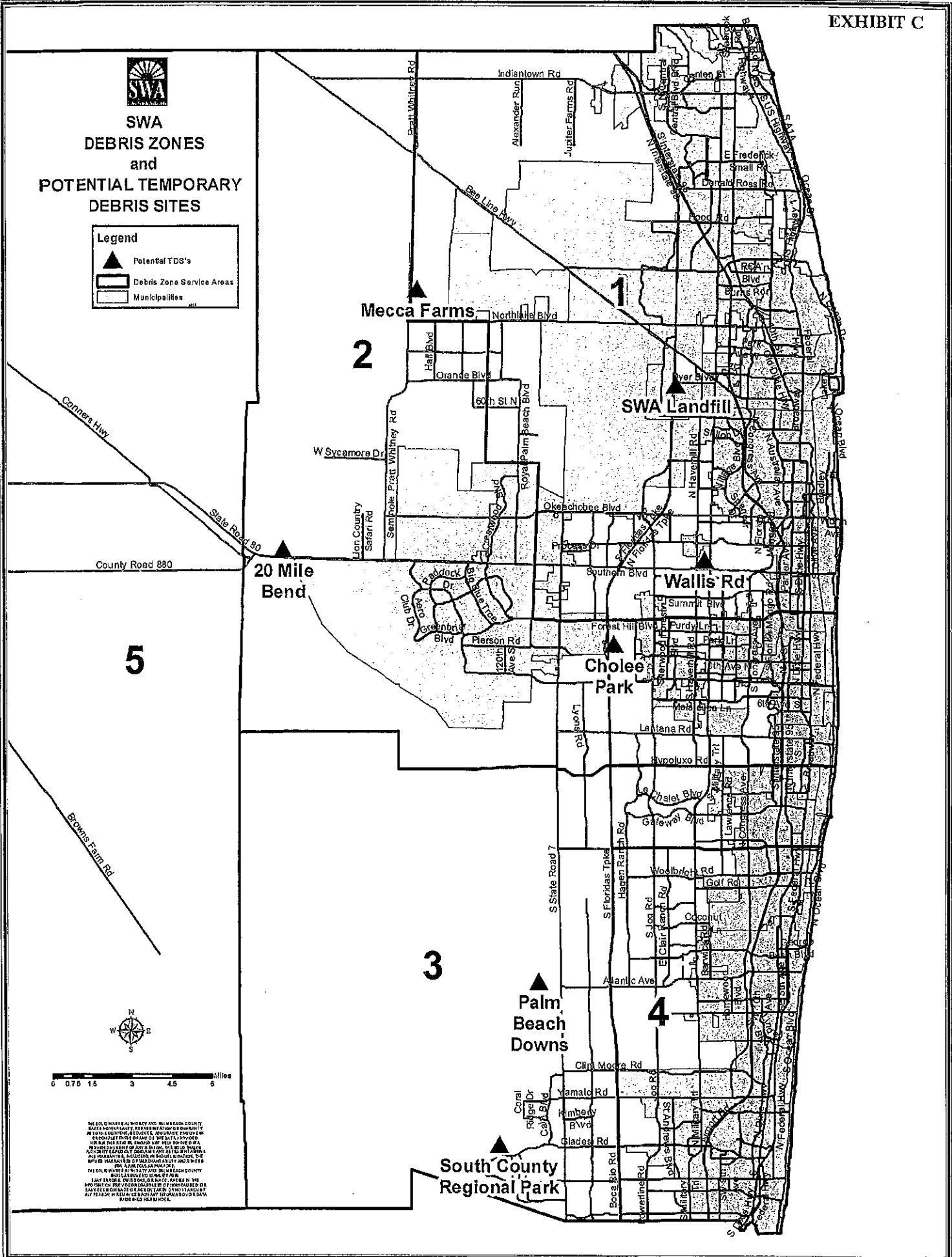
Debris Management Site Set-up and Closure and Debris Clearance for Access - optional use by County and other Governmental Entities			
Equipment and Labor Rates			
Equipment Type	Hourly Equipment Rate	Hourly Labor Rate	Total Hourly Rate
Bobcat Loader	\$60.00	\$35.00	\$95.00
Crew Foreman w/ Cell Phone and Pickup	\$15.00	\$60.00	\$75.00
Dozer, Tracked, D5 or similar	\$65.00	\$35.00	\$100.00
Dozer, Tracked, D6 or similar	\$85.00	\$35.00	\$120.00
Dozer, Tracked, D7 or similar	\$105.00	\$35.00	\$140.00
Dozer, Tracked, D8 or similar	\$145.00	\$35.00	\$180.00
Dump Truck, 18 CY-20 CY	\$35.00	\$35.00	\$70.00
Dump Truck, 21CY-30 CY	\$35.00	\$35.00	\$70.00
Generator and Lighting	\$20.00	\$0.00	\$20.00
Grader w/ 12' Blade	\$75.00	\$35.00	\$110.00
Hydraulic Excavator, 1.5 CY	\$80.00	\$35.00	\$115.00
Hydraulic Excavator, 2.5 CY	\$90.00	\$35.00	\$125.00
Knuckleboom Loader	\$115.00	\$35.00	\$150.00
Laborer w/ Chain Saw	\$0.00	\$45.00	\$45.00
Laborer w/ small tools, traffic control, flag person	\$0.00	\$32.00	\$32.00
Lowboy Trailer w/ Tractor	\$85.00	\$35.00	\$120.00
Operations Manager w/ Cell Phone and Pickup	\$15.00	\$70.00	\$85.00
Pickup Truck, .5 Ton	\$15.00	\$0.00	\$15.00
Soil Compactor 81 HP+	\$75.00	\$35.00	\$110.00
Soil Compactor to 80 HP	\$60.00	\$35.00	\$95.00
Soil Compactor, Towed Unit	\$35.00	\$35.00	\$70.00
Truck, Flatbed	\$35.00	\$35.00	\$70.00
Tub Grinder, 800 to 1,000 HP	\$550.00	\$0.00	\$550.00
Water Truck	\$45.00	\$35.00	\$80.00
Wheel Loader, 2.5 CY, 950 or similar	\$80.00	\$35.00	\$115.00
Wheel Loader, 3.5-4.0 CY, 966 or similar	\$95.00	\$35.00	\$130.00
Wheel Loader, 4.5 CY, 980 or similar	\$125.00	\$35.00	\$150.00
Wheel Loader-Backhoe, 1.0-1.5 CY	\$75.00	\$35.00	\$110.00



SWA DEBRIS ZONES and POTENTIAL TEMPORARY DEBRIS SITES

Legend

- Potential TDS's
- Debris Zone Service Areas
- Municipalities



THE SOLE DUTY OF SWA AND THE LOCAL GOVERNMENT IS TO PROVIDE A SAFE AND HEALTHY ENVIRONMENT FOR THE PEOPLE OF SWA. SWA AND THE LOCAL GOVERNMENT ARE NOT RESPONSIBLE FOR THE CONSEQUENCES OF ANY ACCIDENTS OR INCIDENTS THAT MAY OCCUR AS A RESULT OF THE USE OF SWA'S SERVICES. SWA AND THE LOCAL GOVERNMENT ARE NOT RESPONSIBLE FOR THE CONSEQUENCES OF ANY ACCIDENTS OR INCIDENTS THAT MAY OCCUR AS A RESULT OF THE USE OF SWA'S SERVICES.

LOCATION OF PUBLICLY OWNED DEBRIS MANAGEMENT SITES

Solid Waste Authority Temporary Debris Disposal Sites

SITE	LOCATION
Mecca Farms	Approximately 1 mile north of Northlake Blvd on the east side of Seminole Pratt Whitney Rd
Dyer Closed Landfill	South of Beeline Hwy on the west side of Haverhill Road
20 Mile Bend/Palm Beach Aggregates *	North side of Southern Blvd approximately 4 miles west of Lion Country Safari
Hooker Highway *	South side of Hooker Highway approximately 1 mile west of the intersection of State Road 80 and 441
Wallis Road	Located on the north side of Wallis Road between Haverhill Road and Military Trail
Cholee Park	West of Jog Road on the south side of Forest Hill Blvd across from the entrance to Okeehchee Park
Palm Beach Downs	Approximately ¾ mile west of 441 on West Atlantic Avenue
South County Regional Park	Take Glades Road west of 441 approximately 2 miles to Ponderosa Drive and turn north to the site

* Private Sites used in the past.

SMALL BUSINESS ENTERPRISE (SBE) PLAN

CONTRACTOR will retain the services of a certified SBE sub-contractor(s) to provide debris removal and disposal services following activation by the AUTHORITY.

CONTRACTOR will make every effort to meet 15% Small Business Enterprise (SBE) participation.

SOLID WASTE AUTHORITY

OF PALM BEACH COUNTY

7501 North Jog Road

West Palm Beach, Florida 33412

Telephone: 561-640-4000 • Fax: 561-640-3400



**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No.

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

Project: _____

Specific Work to be performed: _____

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

Method of Payment: _____

Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ Date: _____

AUTHORITY Signature: _____ Date: _____

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

<p style="text-align: center;">FEMA 322 PUBLIC ASSISTANCE GUIDE</p>

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 *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

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

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

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

MOBILIZATION SCHEDULE

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

	Category 1 & 2	Category 3	Category 4	Category 5
Within 24 hours	40%	25%	20%	15%
Within 48 hours	80%	40%	35%	25%
Within 72 hours	100%	75%	50%	45%
Within 96 hours		100%	70%	60%
Within 7 days			90%	80%
Within 10 days			100%	90%
Within 14 days				100%

Revised May 1, 2012

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

EXHIBIT I

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve

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such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor

under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives,

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and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the

Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require

or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible 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 District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or

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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

EXHIBIT I

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification - First Tier Participants:

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

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

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

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom

this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the

prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

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

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

2. Where the prospective lower tier participant is unable to

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

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

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

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

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

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

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

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

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

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

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

BUY AMERICA REQUIREMENTS

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

PERFORMANCE AND PAYMENT BOND

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

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Agreement dated _____, 20____ between Principal and Authority for Proposal of Hurricane/Disaster Debris Removal, Reduction and Disposal, **Agreement No. 13-249**, the Agreement being made a part of this bond by reference, in the time and in the manner prescribed in the Agreement, and;
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials and supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement, and;
3. Pays Authority all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Authority sustains because of a default by Principal under the Agreement, and;
4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement, and;
5. At completion of all work covered by Agreement and Final Payment by Authority to Principal then Principal will replace this Performance and Payment Bond with a Proposal Bond, in the amount of 5% of this Performance and Payment Bond, to be held by the Authority as a guarantee that Principal will provide to the Authority a Performance and Payment Bond in the amount of up to \$10,000,000 on the occasion of a subsequent Task Order in accordance with the above referenced Agreement;

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

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

EXHIBIT K

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

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

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

PRINCIPAL: _____

By: _____
Signature

WITNESS:

- 1. _____
- 2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

- 1. _____
- 2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

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

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

PROPOSAL FORM 2 – PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned:

Phillips and Jordan, Incorporated, as Principal and
(Name of Proposer)

Liberty Mutual Insurance Company, as Surety, are
(Name of Surety)

hereby held and firmly bound unto the Solid Waste Authority of Palm Beach County, West Palm Beach, Florida, as Obligee, in the sum of:

Five Hundred Thousand and No/100

Dollars (\$ 500,000.00) / 5% of the Performance and Payment Bond, which is in the amount of \$10,000,000, as liquidated damages for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

The condition of this obligation is such that whereas the Principal has submitted to the Solid Waste Authority of Palm Beach County a certain Proposal attached hereto and made a part hereof, to enter into an Agreement, hereinafter referenced to as the **AGREEMENT FOR HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION, AND DISPOSAL**. RFP No. 13-240/MRK

NOW THEREFORE,

- a. If said Proposal shall be rejected or withdrawn as provided in the Request for Proposal or, in the alternative,
- b. If said Proposal shall be accepted and the Principal shall duly execute and deliver the Agreement attached hereto and shall furnish all insurance requirements, the specified Performance and Payment Bond for the faithful performance of the Agreement and for the payment of labor and materials furnished for the performance of the Agreement,

then this obligation shall be void, otherwise it shall remain in full force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder in no event shall exceed the amount of this obligation.

The Surety, for value received, hereby agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extensions of the time within which such Proposal may be accepted, and said Surety does hereby waive notice of any such extensions.

IN WITNESS WHEREOF, the parties hereto have duly executed this bond on the 1st day of July, 2013.

PRINCIPAL: Phillips and Jordan, Incorporated

By: Edd Satterfield
Signature (Seal)

WITNESS:

1. Donna Owens
2. Sam Telfo

Name: Edd Satterfield
Title: Assistant Vice President
Address: 191 P&J Road
Robbinsville, NC 28771
Telephone: (828)479-3371

SURETY: Liberty Mutual Insurance Company

By: Catherine L. McMillan
Signature (Seal)

WITNESS:

1. Gregory T. Fry
2. Marilyn Spain

Countersigned By:

Gregory T. Fry
Gregory T. Fry, FL Resident Agent

Name: Catherine L. McMillan
Title: Attorney-In-Fact
Address: 413 Northshore Dr., SW
Knoxville, TN 37919
Telephone: (865)588-7200

Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida, in accordance with Florida Statute 287.0935, and be approved by the Solid Waste Authority of Palm Beach County.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 5932445

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Catherine L. McMillan; Tom H. McCarty III

all of the city of Knoxville, state of TN each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surely and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 3rd day of January, 2013.

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

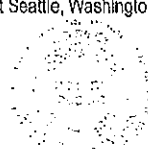


STATE OF WASHINGTON ss
COUNTY OF KING

On this 3rd day of January, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.

By: KD Riley
KD Riley, Notary Public



This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such Instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 1st day of July, 2013.



By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, dual value guarantees, currency rate, interest rate or

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



Liberty Mutual Surety

Liberty Mutual Surety
13830 Ballantyne Corporate
Suite 450
Charlotte, North Carolina 28277
Phone: (704) 759-7300
Fax: (866) 548-6575

April 24, 2013

The Solid Waste Authority of Palm Beach County

Re: Phillips and Jordan, Incorporated
Subject: Irrevocable Letter of Commitment - RFP No. 13-234/MRK Hurricane/Disaster
Debris Removal, Reduction, and Disposal, Palm Beach, FL

Liberty Mutual Insurance Company is proud to handle the bonding needs of Phillips and Jordan, Incorporated. Liberty Mutual Insurance Company is a Class XV A "Excellent" AM Best Rated Company. We are US Treasury Listed and licensed to do business in Florida. We constantly monitor the manner in which Phillips and Jordan Incorporated meets their construction and financial obligations to owners, subcontractors, suppliers and the credit community. We are pleased to report that Phillips and Jordan Incorporated is an extremely strong and stable company in financial terms and handle these obligations in an exemplary manner.

While we would certainly give consideration to higher limits should specific conditions require doing so, we currently have in place for Phillips and Jordan Incorporated a single program exceeding \$150,000,000 with an aggregate exceeding \$500,000,000.00 bonding line, with approximately \$400,000,000.00 available capacity. We anticipate no problems in issuing 100% Performance and Payment bonds for any project at the time of the final bond request. Naturally, the execution of any final bonds will be subject to a mutually satisfactory review which will include but not be limited to the acceptability of the contract documents, bond forms and financing.

Should you have questions or if we may be of assistance, please feel free to contact us.

Sincerely,

A handwritten signature in black ink that reads "Mike Coale".

Mike Coale, Underwriting Specialist

TAB 14



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: **October 5, 2016**

Agenda Item No. *Tab ..*

Agenda Title: Legal Reimbursement Request for Reimbursement Former Commissioner Kathleen Rapoza

- SPECIAL PRESENTATION/REPORTS CONSENT AGENDA
- BOARD APPOINTMENT OLD BUSINESS
- PUBLIC HEARING ORDINANCE ON ____ READING
- NEW BUSINESS
- OTHER: _____

Approved by Town Manager *[Signature]* **Date:** 9-28-16

John O. D'Agostino, Town Manager

Name/Title

<p>Originating Department:</p> <p>Town Manager</p>	<p>Costs: \$10,110.85</p> <p>Funding Source: General Fund</p> <p>Acct. # <i>108-31101</i></p> <p><input checked="" type="checkbox"/> Finance <u><i>BK 21101</i></u></p>	<p>Attachments:</p> <ul style="list-style-type: none"> • Attorney Baird's Letter. • State of Florida Commission on Ethics Press Release. • David A. Act on Esquire Billing Statement. • Florida Commission on Ethics Public Report • Attorney Acton's Request Letter to Attorney Baird
<p>Advertised:</p> <p>Date: _____</p> <p>Paper: _____</p> <p><input checked="" type="checkbox"/> Not Required</p>	<p>All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.</p>	<p>Yes I have notified everyone _____</p> <p>OR</p> <p>Not applicable in this case JOD</p> <p>Please initial one.</p>

Summary Explanation/Background: Attorney Acton on behalf of his client Kathleen Rapoza is requesting reimbursement of legal fees in the amount of \$10,110.85. Such fees were incurred representing former Commissioner Rapoza on an ethics complaint leveled against Rapoza during the Earl Stewart expansion project. Former Commissioner Rapoza was acting in her official capacity and serving a public purpose in her actions.

The attachments from Attorney Baird and Attorney Acton along with the ethics decision and the Ethics publication are sufficient to reimburse Kathleen Rapoza according to Florida State Statute.

Recommended Motion: Move to reimburse legal fees incurred from a Florida State Ethics Complaint filed against Kathleen Rapoza acting in her official capacity as a Town Commission Member in the amount of \$10,110.85.

Thomas J. Baird
Florida Bar Board Certified
City, County and Local Government Attorney
561-650-8233
Fax: 561-746-6933
tbaird@jonesfoster.com

September 27, 2016

VIA EMAIL: jdagostino@lakeparkflorida.gov

John D'Agostino
Town Manager
Town of Lake Park
535 Park Avenue
Lake Park, FL 33403

Re: COE Action on Former Commissioner Rapoza

Dear John:

Please find attached the Public Report of the Florida Commission on Ethics finding "no probable cause" to pursue the complaint of Mr. John Hash against former Commissioner Rapoza. I am also attaching a letter from Ms. Rapoza's attorney wherein he requests that his attorney fees be reimbursed.

Attorney Acton has correctly referenced the law as it pertains to an attorney who defends a public official who was acting in her official capacity and performing her public duty. Therefore, I recommend that Ms. Rapoza be reimbursed the \$10,110.85 in attorney fees and expenses she incurred defending herself from what ultimately was a baseless complaint. Please place this request on the Commission's next available agenda.

Very truly yours,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.



By _____
Thomas J. Baird

TJB:mrg

Attachments

p:\docs\26508\00001\ltr\1ql4619.docx

Matthew F. Carlucci
Chair
Michelle Anchors
Vice Chair
Daniel Brady, Ph.D.
Matthew J. Carson
Michael Cox
Tom Freeman
Guy W. Norris
Kimberly Bonder Rezanka
Stanley M. Weston



State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

"A Public Office is a Public Trust"

Virindia Doss
Executive Director
C. Christopher Anderson, III
*General Counsel/
Deputy Executive Director*

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

PRESS RELEASE

For Immediate Release
September 14, 2016

CONTACT PERSON:

Virindia Doss or
Kerrie J. Stillman
850.488.7864

May be accessed on the Internet at www.ethics.state.fl.us

TALLAHASSEE—September 14, 2016— Meeting in Tallahassee on September 9th in closed session, the Florida Commission on Ethics took action on 30 complaints, Chairman Matthew F. Carlucci announced today. A finding of probable cause is not a determination that a violation has occurred. Such a determination is made only after a full evidentiary hearing on the allegations.

The Commission found probable cause to believe that Miami-Dade Schools Superintendent ALBERTO CARVALHO violated the gift law in several different instances by accepting but failing to disclose tickets or admissions valued at more than \$100. Probable cause also was found to believe that he accepted neckties valued at more than \$100 and failed to report them as gifts. However, because Mr. Carvalho was forthcoming, accepted responsibility for the failure to report certain gifts and ultimately

reported those gifts on a Form 9, the Commission will take no further action on the allegations unless he requests an administrative hearing. Two other allegations concerning a failure to disclose tickets or event admissions given to him were dismissed with a finding of no probable cause.

The Commission found no probable cause to believe that GERALDINE MUOIO, Mayor of the City of West Palm Beach and Chair of the City's Community Redevelopment Agency, voted on a measure that would result in a special private gain to her or her daughter. No probable cause was found to believe that she misused her position to affect the development of a health and wellness campus. An allegation that Ms. Muoio had a conflicting contractual relationship with a hospital while it was regulated by or doing business with the City was dismissed with a finding of no probable cause.

No probable cause was found to believe that KEITH A. JAMES, West Palm Beach Commissioner and a member of the City's Community Redevelopment Agency, solicited or accepted campaign contributions based upon an understanding that his vote, official action, or judgment would be influenced. No probable cause also was found to believe that he accepted campaign contributions when he knew or should have known that they were given to influence a vote or other action in which he was expected to participate. The Commission found no probable cause to believe that Mr. James misused his position to affect the development of a health and wellness campus.

The Commission found no probable cause to believe that Lake Hamilton Police Chief LYLE JAGNISZAK violated ethics laws. There were seven allegations: that he accepted monetary gifts for several years from a local business owner and in exchange

for those gifts he investigated or harassed persons who complained about that business owner; that he accepted those monetary gifts when he knew or should have known that they were intended to influence his official actions; that he misused his position to accept gifts and investigate individuals for the benefit of the donor; that he inappropriately disclosed or used certain information that he had access to by virtue of his position as Police Chief for the benefit of another person or entity; that he solicited gifts from a lobbyist or vendor of his agency; that he accepted a gift valued at more than \$100 from someone other than a lobbyist or vendor and failed to report it; and that he accepted lottery tickets from a local business owner and failed to report them.

The Commission considered a complaint filed against Lake Park Town Commissioner KATHLEEN RAPOZA. They found no probable cause to believe that she misused her position to favor her husband's employer. The Commission also found no probable cause to believe that she solicited or accepted something of value with the understanding that it would influence her official action. No probable cause was found to believe that she accepted compensation, payment, or a thing of value when she knew or should have known that it was given to influence her vote or actions as a Commissioner. An allegation that she voted on measures that would inure to the special private gain or loss of her husband or her husband's employer was dismissed with a finding of no probable cause.

No probable cause was found to believe that Marco Island Chief of Police ALFRED SCHETTINO misused his position to direct officers to issue reports, citations, or Notices to Appear to a rental property tenant regarding a complaint filed by a City Councilmember who had alleged that the tenant had violated the City noise ordinance.

The Commission also found no probable cause to believe that he misused his position to alter or destroy police records related to the matter.

No probable cause was found to believe that LYNN GRUBER-WHITE, Hernando County Planning & Zoning Commission member, had a conflicting employment or contractual relationship by serving as President of the Ridge Manor Property Owners Association while simultaneously serving as a member of the Hernando County Planning and Zoning Commission. The Commission found no probable cause that she had a voting conflict when she voted on certain matters. No probable cause also was found on an allegation that she failed to disclose a voting conflict or file a voting conflict memorandum as required by law.

No probable cause was found to believe that MACK THETFORD, Chairman of a Bicycle Pedestrian Advisory Committee in the Milton area, misused his position to add a measure to a meeting agenda to have the Committee recommend to the Florida-Alabama Transportation Planning Organization to advocate that the Florida Department of Transportation consider an alternate southern route in its study concerning changes to Highway 90. No probable cause was found to believe that he voted on a matter before the Committee from which he would financially benefit. No probable cause also was found to believe that he participated in a matter that would inure to his special private gain or loss without first disclosing his interest.

The Commission found no probable cause to believe that Central Broward Water Control District Commissioner DOUGLAS R. BELL misused his District personnel and resources to benefit his law firm or his clients.

Probable cause was found to believe that Representative CARY PIGMAN, District 55, Florida House of Representatives, misused his position by linking his efforts to obtain legislative funding for the Okeechobee School District to retaliate or attempt to retaliate against an employee of a School District. However, the Commission rejected the recommendation of its Advocate and found no probable cause to believe that Representative Pigman solicited the Okeechobee County Superintendent of Schools to take an action against a School District employee based on the understanding that this action would influence his vote, official action, or judgment as a member of the Florida House of Representatives. An allegation that he misused his position to secure a job with the South Florida Water Management District for an individual connected to him in a personal capacity even though others were more qualified for the position was dismissed with a finding of no probable cause.

COLLEEN CONKLIN-WALSH serves as a member of the Flagler County School Board and failed to file her 2013 Form 6 disclosure as required by law. The Commission was required to initiate an investigation to determine if her failure to file was willful. The Commission found probable cause to believe that she willfully failed to file her disclosure form. However, the Commission will take no further action on the matter unless Ms. Conklin-Walsh requests a hearing. In two other self-initiated investigations to determine if a failure to file the required annual disclosure form was willful, probable cause was found to believe that FRANK SHEIL, member of the Dundee Board of Adjustment, and ANTWON McNEIL, Midway Planning & Zoning Board member, willfully failed to file their 2014 Form 1 disclosures.

The Commission reviewed a number of complaints for legal sufficiency. These reviews are limited to questions of jurisdiction and determinations as to whether the contents of the complaint are adequate to allege a violation of the Code of Ethics or other laws within the Commission's jurisdiction. As no factual investigation precedes the reviews, the Commission's conclusions do not reflect on the accuracy of the allegations made in these complaints. The Commission dismissed the following complaints for lack of legal sufficiency: MARGORIE ELAINE POE, Madeira Beach City Commissioner; LILA SELLERS, Bradford County Commissioner; WILL SEXTON, Bradford County Attorney; STEVE WHIDDEN, Hendry County Sheriff; MONIQUE I. MILLER, Candidate for the Florida House of Representatives; BARRY STEARNS, Broward County Fire Inspector & Plans Examiner; BRENNA DURDEN, Atlantic Beach City Attorney; PATRICK DEWAYNE MENCY, Candidate for St. Johns County Clerk of Courts; WILL C. SWANSON, Jacksonville Sheriff's Detective; HECTOR MARTINEZ, Ft. Lauderdale Police Sergeant; JOHN BOLLINGER, Ft. Lauderdale Police Captain; YVETTE MARTINEZ, Ft. Lauderdale Police Detective; KATHERINE FERNANDEZ RUNDLE, 11th Judicial Circuit State Attorney; ARTHUR CHRISTIAN MILLER, 7th Judicial Circuit Assistant State Attorney; RITCH WORKMAN, Member of the House of Representatives and Candidate for the Florida Senate; WILLIAM MEGGS, 2nd Judicial Circuit State Attorney; and DEBBIE MAYFIELD, Member of the Florida House of Representatives and Candidate for Florida Senate.

PUBLIC SESSION

The Commission voted in public session to forward fees petitions in five complaints

to the Division of Administrative Hearings for a hearing to determine if attorney fees and costs should be awarded from the complainants in the previously-dismissed complaints regarding the following Flagler County officials: NATE McLAUGHLIN, Commissioner; FRANK J. MEEKER, Commissioner; CHARLES ERICKSEN, Commissioner; ALBERT J. HADEED, County Attorney; and GEORGE HANNS, Commissioner.

Contact the Commission office to obtain rulings on appeals of automatic fines imposed for late submission of financial disclosure reports submitted by public officers and employees. (See Item V. on the September 9th meeting agenda posted on the Commission's website.)

The Florida Commission on Ethics is an independent nine-member commission formed in 1974 to review complaints filed under the statutory Code of Ethics and to answer questions from public officials about potential conflicts of interest through its issuance of advisory opinions.

If the Ethics Commission believes a violation of the law may have occurred, it may decide to hold a public hearing. If it concludes a violation has been committed, it may recommend civil penalties that include removal from office or employment and fines up to \$10,000 per violation.

DAVID A. ACTON, ESQ.
PLLC

601 Heritage Drive, Suite 458
Jupiter, Florida 33458-2777
Tel. 561-578-4680
Fax 561-656-2377
DActon.law@gmail.com

October 1, 2015

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT
September 1 - 30, 2015

09/03/15	Conferred with client and husband at Lake Park Town Hall; obtained copy of relevant meeting minutes from Town Clerk	0.8 hrs
09/16/15	Drafted contract letter to client	N.C.
09/17/15	Conducted legal research re: applicable Rules of Administrative Procedure for FCOE proceedings	0.7 hrs
09/18/15	Drafted and e-filed Notice of Appearance with FCOE Complaint Coordinator; mailed copy to client; conducted teleconference with client	0.5 hrs
09/30/15	Drafted and mailed Notice of Filing to FCOE Complaint Coordinator; mailed copy to client; drafted and mailed letter to client	0.7 hrs
	TOTAL TIME	2.7 hrs

Fees due and payable for professional services at rate of \$250/hour = \$ 675.00
Expenses to be reimbursed (receipts attached) = \$ 0.00

TOTAL FEES & EXPENSES \$ 675.00

Retainer received	\$1,000.00
Less Fees & Expenses on this Statement	- \$ 675.00
Retainer balance on account	\$ 325.00

NO PAYMENT IS DUE FROM YOU AT THIS TIME. THANK YOU!

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DActon.law@gmail.com

January 2, 2015

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT

October 1 – December 31, 2015

11/10/15	Conducted teleconference with client re: status of matter and preparation of affidavits to submit to FCOE	0.3 hrs
11/16/15	Conducted teleconference with FCOE Complaint Coordinator re: status of matter; drafted letter to client re: status, process of investigation, probable cause hearing, etc.	1.2 hrs
11/23/15	Conducted teleconference with client re: status, drafting and executing affidavits; drafting memorandum of law, etc.	0.3 hrs
12/08/15	Conducted teleconference with client re: status and recent votes on further agenda items related to EST expansion	0.1 hrs
12/14/15	Conducted teleconference with client re: advice concerning Voting on upcoming agenda items related to EST expansion	0.1 hrs
	Reviewed agenda items scheduled for 12/16/15 Commission meeting re: EST expansion	0.5 hrs
12/15/15	Conducted teleconference with client re: no conflict of interest concerning upcoming votes re: EST expansion	0.1 hrs
12/18/15	Drafted outline of Complaint allegations to be addresss in affidavits by Gerald Rapoza and EST representative	0.6 hrs
12/29/15	Conducted teleconference with client re: affidavits	N.C.
12/30/15	Drafted proposed affidavit of Gerald Rapoza	1.0 hrs

12/31/15 Drafted cover letter to client 0.4 hrs
TOTAL TIME **4.6 hrs**

Fees due and payable for professional services at rate of \$250/hour = \$1,150.00
Expenses to be reimbursed (~~receipts attached~~) = \$ 0.00

TOTAL FEES & EXPENSES **\$1,150.00**

Fees & Expenses on this Statement	\$1,150.00
Retainer balance on account	- \$ 325.00
TOTAL DUE	\$ 825.00

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February 4, 2016

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT
January 1 – 31, 2016

01/04/16	Conducted teleconference with client re: intent to move for reconsideration of Res. 49-12-15 (12/16/15 agenda item J)	0.2 hrs
	Reviewed agenda item J and proposed resolution; reviewed Fla. Stat. §166.041(4) re: effective dates of resolutions and Code §2-53 re: Town adoption of Robert's Rules of Order	0.5 hrs
01/05/16	Conducted teleconference with client re: reconsideration of resolution and effect on FCOE investigation; teleconference with Town Attorney Thomas Baird, Esq.; and second teleconference with client	0.6 hrs
01/08/16	Conducted teleconference with client re: affidavits and outcome of motion for reconsideration (not made)	0.1 hrs
01/11/16	Revised affidavit of Gerald Rapoza; drafted proposed affidavit of Jason Stewart, General Manager of Earl Stewart Toyota	0.7 hrs
01/12/16	Conducted teleconference with Jason Stewart re: affidavit; revised affidavit; drafted e-mail to him sending affidavit	0.7 hrs
	Conducted teleconference with client; made further revisions to affidavit of Gerald Rapoza based upon teleconference with Jason Stewart; mailed revised affidavit to Gerald Rapoza	0.6 hrs
01/21/16	Conducted teleconference with client re: execution of affidavit by Gerald Rapoza	0.1 hrs
01/23/16	Reviewed executed affidavit of Gerald Rapoza	N.C.

01/27/16	Drafted e-mail to Jason Stewart re: status of proposed affidavit; reviewed response; re-sent original e-mail & affidavit to him	0.2 hrs
01/29/16	Drafted notice of filing affidavits of Rapoza and Stewart (pending receipt of latter)	0.2 hrs
	TOTAL TIME	3.9 hrs

Fees due and payable for professional services at rate of \$250/hour	= \$	975.00
Expenses to be reimbursed (receipts attached)	= \$	0.00

TOTAL FEES & EXPENSES **\$ 975.00**

Balance due on previous Statement	\$	825.00	
Payment received	- \$	<u>825.00</u>	<i>Thank you</i>
Retainer balance on account	\$	0.00	
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Fees & Expenses on this Statement	\$	975.00	
Retainer balance on account	- \$	<u>0.00</u>	
TOTAL DUE	\$	975.00	

601 Heritage Drive, Suite 458
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April 1, 2016

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT

February 1 – March 31, 2016

02/03/16	Called Jason Stewart and left voice-mail re: affidavit status	0.1 hrs
02/05/16	Exchanged text messages with Jason Stewart re: affidavit	0.1 hrs
	Conducted teleconference with client re: case status and communications with Jason Stewart re: affidavit	0.2 hrs
03/08/16	Sent text message to Jason Stewart re: affidavit status	0.1 hrs
03/09/16	Conducted teleconference with client re: attempts to contact Jason Stewart re: affidavit, and case status generally	0.2 hrs
03/15/16	Attempted conference with Jason Stewart at dealership, but was told he was out-of-town	0.1 hrs
03/23/16	Received voice-mail from client re: expiration of term of office and offer to contact Jason Stewart	N.C.
03/24/16	Drafted proposed letter to FCOE from Town Clerk, V. Mendez, and sent by e-mail to Town Attorney, T. Baird; reviewed his response; drafted e-mail to Town Clerk sending draft of letter	0.5 hrs
	Called Jason Stewart and left voice-mail re: affidavit status	0.1 hrs
	Conducted teleconference with client re: letter, attempts to contact Jason Stewart re: affidavit; etc.	0.1 hrs
03/25/16	Reviewed e-mail and voice-mail from an FCOE investigator, Roberto Anderson-Cordova, re: scheduling interviews	0.1 hrs

03/28/16	Reviewed e-mail from Town Clerk confirming requested letter being sent to FCOE; drafted brief response	0.1 hrs
	Conducted teleconference with FCOE investigator and drafted memo to file; reviewed personal calendar for available dates to conduct interviews; conducted teleconference with client re: available dates for interviews and pre-interview meeting, letter from Town Clerk, etc.	0.5 hrs
	Called Jason Stewart and left voice-mail re: getting attorney's name to discuss affidavit and possible FCOE interview	0.1 hrs
03/29/16	Conducted teleconference with client re: available dates for interviews; drafted e-mail to FCOE investigator re: dates, etc.	0.2 hrs
03/30/16	Reviewed e-mail from FCOE investigator re: preferred date for interviews of client, her husband, and Jason Stewart	0.1 hrs
	Conducted teleconference with Jason Stewart re: name of his attorney and possible interview by FCOE investigator	0.1 hrs
	Reviewed mailed copy of letter from Town Clerk to FCOE	N.C.
03/31/16	Conducted teleconference with Gary M. Dunkel, Esq. attorney for Jason Stewart and drafted memo to file; conducted teleconference with client re: contact with Stewart and his attorney, investigator's preferred date for interviews, etc.; drafted e-mail response to investigator re: interviews	0.6 hrs
	TOTAL TIME	3.3 hrs

Fees due and payable for professional services at rate of \$250/hour = \$ 825.00
Expenses to be reimbursed (~~receipts attached~~) = \$ 0.00

TOTAL FEES & EXPENSES **\$ 825.00**

Balance due on previous Statement	\$ 975.00	
Payment received	- \$ 975.00	<i>Thank you</i>
Retainer balance on account	\$ 0.00	
-----	-----	
 Fees & Expenses on this Statement	 \$ 825.00	
Retainer balance on account	- \$ 0.00	
TOTAL DUE	\$ 825.00	

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May 2, 2016

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT

April 1-30, 2016

04/02/16	Reviewed e-mail from Jason Stewart's attorney, Gary Dunkel, Esq., confirming their availability for interview on 4/26/2016; drafted response	0.1 hrs
04/04/16	Drafted e-mail to FCOE investigator re: interview date & time for Jason Stewart and his attorney	0.1 hrs
04/05/16	Conducted teleconference with Jason Stewart re: revisions to the affidavit; revised affidavit accordingly; drafted e-mail to Stewart, sending revised affidavit and instructions to return executed original to me for filing with FCOE	0.6 hrs
04/06/16	Reviewed e-mail from FCOE investigator confirming place, date, and time for interviews of client and her husband	0.1 hrs
04/13/16	Reviewed e-mail and executed affidavit from Jason Stewart; drafted notice of filing affidavit with FCOE, copy to client	0.3 hrs
04/21/15	Reviewed case file, especially complaint, and prepared outline of topics to discuss with client and her husband in preparation for interviews	0.7 hrs
04/22/16	Conferred with client and her husband in preparation for interviews by FCOE investigator	1.0 hrs
04/25/16	Drafted list of topics concerning course and status of investigation to discuss with FCOE investigator	0.3 hrs

David A. Acton, Esq. PLLC
Statement (April 1-30, 2016)
In re: Kathleen Rapoza (FCOE 15-170)

Page 2

04/26/16	Accompanied and advised client and her husband during inter-views by FCOE investigator, Roberto Anderson-Cordova, and conferred with client and her husband post-interview	2.5 hrs
	TOTAL TIME	5.7 hrs

Fees due and payable for professional services at rate of \$250/hour	= \$1,425.00
Expenses to be reimbursed (receipts attached)	= \$ 0.00

TOTAL FEES & EXPENSES **\$1,425.00**

Balance due on previous Statement	\$ 825.00	
Payment received	- \$ 825.00	<i>Thank you</i>
Retainer balance on account	\$ 0.00	
-----	-----	
Fees & Expenses on this Statement	\$1,425.00	
Retainer balance on account	- \$ 0.00	
TOTAL DUE	\$1,425.00	

DAVID A. ACTON, ESQ.
PLLC

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DActon.law@gmail.com

August 2, 2016

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT

May 1 – July 31, 2016

06/30/16	Reviewed text message from client; conducted teleconference with her re: employment status of her husband while FCOE investigation still pending	0.1 hrs
07/05/16	Drafted and mailed Request for Notification and Copies re: Investigator's Report and contents of FCOE files	0.5 hrs
07/11/16	Reviewed e-mail from FCOE Complaint Coordinator (C.C.) re: sending documents as e-mail attachments rather than by U.S. Mail; drafted response	0.1 hrs
07/13/16	Reviewed e-mail from FCOE C.C. sending link to contents of FCOE Complaint File; reviewed contents on-line to confirm completeness; reviewed cover letter from C.C. re: Report of Investigation (ROI), deadline for response, hearing date/time, & place, etc.; calendared deadline and hearing dates	0.6 hrs
07/15/16	Reviewed e-mail from FCOE C.C. sending link to contents of FCOE Investigative File; reviewed initial FCOE Determination of Investigative Jurisdiction and Order to Investigate; prepared synopsis of Order with text of cited statutes for client and use in preparing written response and arguments; reviewed ROI, including comparison of findings to Commission minutes and other documents; drafted letter to client, including copies of ROI, cover letter (notice of hearing), Order, and synopsis	2.6 hrs
07/16/16	Drafted outline of matters to discuss with client based on ROI, notice of hearing, synopsis of Order to Investigate, applicable FCOE administrative rules, timeline & deadlines, etc.	1.2 hrs

07/20/16	Conducted teleconference with client re: ROI, notice of hearing, contents of written response, attendance at FCOE hearing; etc.	1.1 hrs
07/21/16	Reviewed contents of FCOE Investigative File on-line; prepared list of contents; printed copies of e-mails to/from investigator; began drafting Response to ROI	2.4 hrs
07/22/16	Continued drafting Response to ROI; drafted e-mail to client re: delay in completion; prepared chart re: payments to client's husband by Earl Stewart Toyota (Response attachment)	2.1 hrs
07/23/16	Conducted legal research for cases interpreting statutes cited in FCOE Order to Investigate; continued drafting Response to ROI	2.9 hrs
07/24/16	Completed drafting Response to ROI; drafted e-mail forwarding draft to client	2.6 hrs
07/25/16	Conducted teleconference with client re: draft Response to ROI	0.2 hrs
07/26/16	Executed Response; prepared copies; mailed original to FCOE and copy to client	0.5 hrs
	TOTAL TIME	16.9 hrs

Fees due and payable for professional services at rate of \$250/hour = \$4,225.00
Expenses to be reimbursed (receipts attached) = \$ 35.85

TOTAL FEES & EXPENSES **\$4,260.85**

Balance due on previous Statement	\$1,425.00	
Payment received	- \$1,425.00	<i>Thank you</i>
Retainer balance on account	\$ 0.00	
-----	-----	
Fees & Expenses on this Statement	\$4,260.85	
Retainer balance on account	- \$ 0.00	
TOTAL DUE	\$4,260.85	

September 21, 2016

Kathleen Rapoza
801 Lake Shore Dr., Apt. 114
Lake Park, FL 33403-2922

Re: FCOE Complaint No. 15-170

STATEMENT

August 1 – September 21, 2016

08/08/16	Conducted teleconference with client re: case status	0.1 hrs
08/10/16	Received and reviewed FCOE Advocate's Recommendation (for findings of "no probable cause" on all four allegations) and cover letter from FCOE Complaint Coordinator (C.C.); prepared copies for client; drafted brief e-mail to client and conducted teleconference with client re: findings, hearing, on September 9 th , request to Town for reimbursement, etc.	0.5 hrs
08/18/16	Drafted Response to Advocate's Recommendation; drafted cover letter to C.C.; mailed originals to FCOE & copies to client	1.0 hrs
09/09/16	Conducted teleconference with FCOE staff member and left voice-mail for C.C. re: result of hearing	N.C.
09/10/16	Conducted teleconference with client re: awaiting result of hearing; submission of request for reimbursement; etc.	0.2 hrs
09/12/16	Conducted teleconference with C.C. re: result of hearing (no probable cause found on all four allegations); drafted e-mail to client; reviewed response from her	0.2 hrs
09/14/16	Reviewed FCOE "Press Release" re: results of closed session hearings, including client's	0.1 hrs
09/19/16	Received and reviewed "Public Report" of FCOE findings of no probable cause on all allegations; prepared copy for client	0.1 hrs

09/21/16 Drafted letter to client forwarding copies of Public Report and
and Press Release; drafted letter to Town Attorney, including
copies of Public Report, Press Release, and all Statements, re-
questing reimbursement of client by Town 1.0 hrs

TOTAL TIME **3.2 hrs**

Fees due and payable for professional services at rate of \$250/hour = \$ 800.00
Expenses to be reimbursed (~~receipts attached~~) = \$ 0.00

TOTAL FEES & EXPENSES **\$ 800.00**

Balance due on previous Statement	\$4,260.85	
Payments received	- <u>\$3,000.00</u>	<i>Thank you</i>
Balance on account	\$1,260.85	
-----	-----	
Fees & Expenses on this Statement	\$ 800.00	
Balance on account	+ <u>\$1,260.85</u>	
TOTAL DUE	\$2,060.85	

DATE FILED

SEP 14 2016

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re KATHLEEN RAPOZA,)

Respondent.)

) Complaint No. 15-170
)
)
)

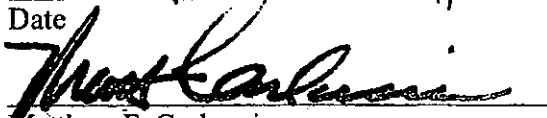
PUBLIC REPORT

Based on the preliminary investigation of this complaint and the recommendation of the Commission's Advocate, the Commission on Ethics finds there is no probable cause to believe the Respondent, serving as a Lake Park Town Commissioner, violated Section 112.313(6), Florida Statutes, by using her position, as a Lake Park Town Commissioner, to favor and/or attempt to favor her husband's employer; finds there is no probable cause to believe that Respondent violated Section 112.313(2), Florida Statutes, by soliciting and/or accepting something of value with the understanding that it would influence her vote, official action, or judgment as a Lake Park Town Commissioner; finds there is no probable cause to believe that Respondent violated Section 112.313(4), Florida Statutes, by accepting compensation, payment, or a thing of value that was given to influence her vote or actions as a Lake Park Town Commissioner; and finds there is no probable cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes, by knowingly voting on measures which would inure to the special private gain or loss of her husband and/or her husband's employer, as alleged in this complaint.

Accordingly, this complaint is dismissed with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session

September 9, 2016.

Date September 14, 2016

Matthew F. Carlucci
Chair, Florida Commission on Ethics

MFC/gps

cc: Mr. David A. Acton, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Mr. John Hash, Complainant

DAVID A. ACTON, ESQ.
PLLC

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September 21, 2016

Thomas J. Baird, Esq.
Town Attorney, Lake Park
4741 Military Trail, Suite 200
Jupiter, FL 33458-4842

Re: In re: Kathleen Rapoza
FCOE Complaint No. 15-170,

Dear Mr. Baird:

The Florida Commission on Ethics (FCOE) determined in “closed session” on Friday, September 9th, that there was “no probable cause” to pursue any of the allegations made in the Complaint filed by Mr. John Hash against former Town of Lake Park Commissioner Kathleen Rapoza, and therefore dismissed the Complaint. Enclosed are copies of the FCOE “Public Report” concerning Mrs. Rapoza specifically and the FCOE “Press Release” issued the same day, stating the findings made by the Commission in “closed session” on September 9th concerning her case and others.

On behalf of Mrs. Rapoza, I hereby request that the Town of Lake Park reimburse her as soon as possible for the \$10,110.85 in attorney’s fees and expenses that she has paid me to represent her for the past 13 months. Enclosed are copies of all of my Statements to her for fees and expenses.

As you know, it is well established in Florida law that public officials are entitled to be reimbursed for the attorney’s fees and expenses incurred in defending themselves against litigation – including ethics complaints – arising out of their public duties and while serving a public purpose. *See Thornber v. City of Ft. Walton Beach*, 568 So.2d 914, 917 (Fla. 1990) (“This entitlement to attorney’s fees arises independent of statute, ordinance, or charter.”). *See also Ellison v. Reid*, 397 So.2d 352, 354 (Fla. 1st DCA 1981) (“If a public officer is charged with misconduct while performing his official duties and while serving a public purpose, the public has a primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct.”); *Lomelo v. City of Sunrise*, 423 So.2d 974, 976 (Fla. 4th DCA 1982) (“These cases establish that a municipal corporation or other public body is obligated to furnish or pay fees for counsel to defend a public official subjected to attack either in civil or criminal proceedings where the conduct complained of arises out of or in connection with the performance of his official duties. This obligation arises independent of statute, ordinance, or

charter. It is not subject to the discretion of the keepers of the city coffers.”); *Malloy v. Board of County Commissioners of Leon County*, 946 So.2d 1260, 1263 (Fla. 1st DCA 2007) (“This common law right applies to ... ethics proceedings.”).

The allegations made by Mr. Hash in his Complaint over a year ago concerned the “official conduct” of then-Commissioner Rapoza in voting on agenda items at public meetings of the Town Commission, and therefore clearly “arose out of or in connection with the performance of her official duties.” Furthermore, the context out of which the alleged misconduct arose clearly “served a public purpose,” as it involved the fulfillment of her duty as an elected Town Commissioner to consider and vote upon such matters in public meetings.

I submit that, given the extent of my nearly 40 years of experience as an attorney and my Board Certification by the Florida Bar in City, County, and Local Government Law, the \$250 per hour rate that I charged Mrs. Rapoza was very reasonable. I further submit that the amount of time required to conduct this representation – successfully – was also reasonable, especially since the matter involved a full-scale investigation including recorded statements taken of Mrs. Rapoza, her husband, you, Town staff, and Earl Stewart Toyota employees by an FCOE investigator. Additional information or records in regard to either fees or time can be provided, if necessary.

Please keep me informed of when the Town Commission will consider this request. I plan to attend the meeting at which this is addressed, at no charge to Mrs. Rapoza or the Town.

Sincerely,

A handwritten signature in cursive script that reads "David A. Acton".

David A. Acton

Encls.

TAB 15



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: October 19, 2016

Agenda Item No.

Agenda Title: Christmas Tree Sales in Kelsey Park

- SPECIAL PRESENTATION/REPORTS
 - BOARD APPOINTMENT
 - ORDINANCE ON 1st READING
 - NEW BUSINESS
 - OTHER: Discussion Item
- CONSENT AGENDA
 - OLD BUSINESS

Approved by Town Manager *[Signature]* Date: 10/7/16

Nadia Di Tommaso / Community Development Director
Name/Title *ND*

Originating Department: <p style="text-align: center;">Community Development</p>	Costs: \$ 0.00 Funding Source: Acct. # <input type="checkbox"/> Finance _____	Attachments: N/A
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <i>ND</i> Please initial one.

Summary Explanation/Background:

At the September 7, 2016 Town Commission meeting, the Commission discussed the possibility of having Christmas tree sales in Kelsey Park by a private vendor for a 30-day period. Prior to this meeting, the Community Development Department received the same verbal request and after some discussion with internal staff, provided the vendor with staff's determination pursuant to the Town Code provisions. In order to assist the Town Commission with the discussion of this item, staff recommends that the following is considered:

- (1) While the Special Events Chapter 18 of the Town Code does not place a time limit on special events, a special event by general practice typically does not exceed 1-3 days on public property whereby public property events are typically set up to serve the interests of the community and the public at-large. Events on private property can be significantly longer

and are typically set up to serve either a public interest, or a business interest when conducted on commercial private property. In addition, the Special Events Department facility fee schedule is also structured in a way that is in line with the "temporary" intent of special events on public property since it requires a \$400/day park rental fee along with a \$500/day refundable park rental deposit, for a total of \$900/day (up-front) every day the park is used. The proposed Christmas tree sales operation is for 30 days and has been determined to be a business operation more so than a special event.

- (2)** Kelsey Park is zoned "Public", with a "Public Buildings & Grounds" future land use designation and a "Recreation Overlay". By definition, the Public Zoning District is defined as:

"...uses shall be restricted to those necessary or essential to the administration and operation of the town, including but not limited to town hall, recreation facilities, parks and playgrounds, swimming pool areas, libraries, municipal offices, fire and police stations, aquariums, museums, public works facilities, water and sewerage plants, etc."

The Public Buildings & Grounds future land use designation also defines this area in the Future Land Use Element of the Comprehensive Plan as:

"Lands and structures that are owned, leased, or operated by a government entity such as libraries, police stations, fire stations, post offices, government administration buildings, and areas used for associated storage of vehicles and equipment..."

Consequently, staff has determined that a 30-day business operation in Kelsey Park is not consistent with the zoning and land use designations of Kelsey Park. This type of operation is however consistent with commercially-zoned private property, similar to Loews along Congress Avenue who conducts annual Christmas tree sales through a private vendor.

- (3)** The 30-day proposal is an extended use of the public park for private purposes. Consideration should be given to the necessary customer parking and daily loading/unloading needs; water and electric needs; and tent installation needs.

Recommended Motion: For discussion purposes only. A motion from the Town Commission will be required if the Town Commission is interested in modifying the Town Code, zoning or land use designation for Kelsey Park.