



The Crossroads of South Florida,
We envision a sustainable economy, Let Us Grow Together

CITY OF SOUTH BAY

CITY COMMISSION AGENDA

**CITY HALL CHAMBER
TUESDAY, MAY 17, 2022**

335 SW 2ND Avenue
South Bay, FL 33493
www.southbaycity.com
Phone: 561-996-6751 Fax: 561-996-7950

Mayor:	Joe Kyles Sr.
Vice Mayor:	Betty Barnard
Commissioner:	Esther Berry
Commissioner:	Taranza McKelvin
Commissioner:	John Wilson
City Manager:	Leondrae D. Camel
City Attorney:	Burnadette Norris-Weeks
City Clerk:	Natalie Malone

RULES OF PROCEDURE

WHO MAY SPEAK

Meetings of the City Commission are open to the public. They are not; however, public forums. Any resident who wishes to address the commission on any subject within the scope of the Commission's authority may do so, providing it is accomplished in an orderly manner and in accordance with the procedures outlined below.

SPEAKING ON AGENDA ITEM

- I. **Consent Agenda Item** – These are items, which the Commission does not need to discuss individually, and which are voted on as a group. Any Commissioner who wishes to discuss any individual item on the consent agenda may request the Mayor to pull such item from the consent agenda. Those items pulled will be discussed and voted upon individually.
- II. **Regular Agenda Items** – These are items, which the Commission will discuss individually in the order listed on the agenda. By majority vote, the City Commission may permit any person to be heard on an item at a non-public hearing.
- III. **Public Hearing Items** – This portion of the agenda is to obtain input from the public on some ordinances, resolutions and zoning applications. The chair will permit any person to be heard on the item during formal public hearings.

SPEAKING ON SUBJECTS NOT ON THE AGENDA

Any resident may address the Commission on any items pertaining to City business during the Opportunity for the Public to Address the Commission portion of the agenda. Persons wishing to speak must sign in with the City Clerk before the start of the meeting.

ADDRESSING THE COMMISSION: MANNER AND TIME

By majority vote the City Commission may invite citizen discussion on any agenda item. In every case where a citizen is recognized by the Mayor to discuss an agenda item, the citizen shall step to the podium/microphone, state his or her name and address for the benefit of the city clerk, identify any group or organization he or she represents and shall then succinctly state his or her position regarding the item before the city commission. Any question, shall be related to the business of the City and deemed appropriate by the Mayor, shall be directed to the Mayor and the Mayor shall then re-direct the question to the appropriate Commissioner or City Staff to answer the citizen question which shall be related to the business of the City.

All comments or questions of the public are to be directed to the Mayor as presiding officer only. There shall be no cross conversations or questions of any other persons. The length of time each individual may speak should be limited in the interest or order and conduct of the business at hand. Comments to the Commission by individual citizens shall be limited to three (3) minutes during the citizens request period. The City clerk shall be charged with the responsibility of notifying each citizen thirty (30) seconds before said time shall elapse and when said time limit has expired.

APPEALS

If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

DECORUM

If a member of the audience becomes unruly, the Mayor has the right to require the person to leave the room. If a crowd becomes unruly, the Mayor may recess or adjourn the meeting.

PLEASE SILENCE ALL CELL PHONES AND PAGERS

CONTACT INFORMATION

If anyone has questions or comments about anything on the meeting agenda, please contact the City Manager at 561-996-6751.

AMERICANS WITH DISABILITY ACT

In accordance with the Americans with Disability Act and Florida Statute 286.26, persons with disabilities needing special accommodations to participate in this proceeding should contact the city clerk no later than three (3) days prior to the meeting at 561-996-6751 for assistance.

CITY OF SOUTH BAY
CITY WORKSHOP AGENDA

CITY HALL CHAMBER
TUESDAY, MAY 17, 2022
6:30 PM

NOTICE: If any person decides to appeal any decision of the City Commission at this meeting, he/she will need a record of the proceedings and for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, pursuant to F.S. 286.01055. The City of South Bay does not prepare or provide such records.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **DISCUSSION**
 - 3.a. Agenda Items
4. **ADJOURNMENT**

CITY OF SOUTH BAY

REGULAR CITY MEETING AGENDA

CITY HALL CHAMBER

TUESDAY, MAY 17, 2022

7:00 PM

NOTICE: If any person decides to appeal any decision of the City Commission at this meeting, he/she will need a record of the proceedings and for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, pursuant to F.S. 286.01055. The City of South Bay does not prepare or provide such records.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations in order to participate in this proceeding are entitled to the provision of certain assistance at no cost. Please call the City Clerk's Office at 561-996-6751 no later than 2 days prior to the hearing if this assistance is required. For hearing impaired assistance, please call the Florida Relay Service Numbers: 800-955-8771 (TDD) or 800-955-8770 (VOICE).

Any citizen of the audience wishing to appear before the City Commission to speak with reference to any agenda item must complete their "Request for Appearance and Comment" card and present completed form to the City Clerk.

1. CALL TO ORDER, ROLL CALL; PRAYER, PLEDGE OF ALLEGIANCE

2. DISCLOSURE OF VOTING CONFLICTS

3. PRESENTATIONS AND PROCLAMATIONS (*Up to 5 minutes*)

3.a. Proclamation:

National Gun Violence Awareness Day

4. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE COMMISSION

5. 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 the item will be removed from the general order of business and considered in its normal sequence on the Agenda.

5.a. Regular City Workshop and City Meeting

Approval of City Minutes – May 03, 2022

5.b. Regular City Workshop and City Meeting

Approval of Meeting Agenda -May 17, 2022

6. RESOLUTIONS – (Non- Consent) and Quasi-Judicial Hearing, if applicable)

6.a. RESOLUTION NO. 22-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE LETTER OF ACCEPTANCE TO THE MUTUAL AID AGREEMENT FOR HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL BETWEEN SOLID WASTE AUTHORITY OF PALM BEACH COUNTY AND PHILLIPS AND JORDAN, INC.;

PROVIDING FOR AN EFFECTIVE DATE

6.b. RESOLUTION NO. 23-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED CONTRACT FOR THE PROVISION OF AN ELECTION DAY POLLING LOCATION BETWEEN THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS OFFICE AND THE CITY OF SOUTH BAY; PROVIDING FOR AN EFFECTIVE DATE

7. ORDINANCE

8. ROSENWALD ELEMENTARY SCHOOL

9. FINANCE REPORT

9.a. Accounts Payable Report

10. CITY CLERK REPORT

11. CITY MANAGER REPORT

12. CITY ATTORNEY REPORT

13. FUTURE AGENDA ITEMS

14. COMMISSIONER COMMENTS: FOR THE GOOD OF THE ORDER

15. ADJOURNMENT

PROCLAMATION

NATIONAL GUN VIOLENCE AWARENESS DAY

June 3, 2022

- WHEREAS,** this proclamation declares the first Friday in June to be National Gun Violence Awareness Day in the City of South to honor and remember all victims and survivors of gun violence and to declare that we as a country must do more to reduce gun violence.
- WHEREAS,** every day, more than 110 Americans are killed by gun violence, alongside more than 200 who are shot and wounded, and on average there are nearly 16,000 gun homicides every year; and
- WHEREAS,** Americans are 26 times more likely to die by gun homicide than people in other high-income countries; and
- WHEREAS,** gun homicides and assaults are concentrated in cities, with more than half of all firearm related gun deaths in the nation occurring in 127 cities; and
- WHEREAS,** cities across the nation, including the City of South Bay, are working to end the senseless violence with evidence-based solutions; and
- WHEREAS,** protecting public safety in the communities they serve is mayors' highest responsibility; and
- WHEREAS,** support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people with dangerous histories; and
- WHEREAS,** mayors and law enforcement officers know their communities best, are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their citizens safe; and
- WHEREAS,** gun violence prevention is more important than ever as the COVID-19 pandemic continues to exacerbate gun violence after more than two years of increased gun sales, increased calls to suicide and domestic violence hotlines, and an increase in city gun violence;
- WHEREAS,** in January 2013, Hadiya Pendleton was tragically shot and killed at age 15; and on June 3, 2022 to recognize the 25th birthday of Hadiya Pendleton (born: June 2, 1997), people across the United States will recognize National Gun Violence Awareness Day and wear orange in tribute to -(1) Hadiya Pendleton and other victims of gun violence; and (2) the loved ones of those victims; and
- WHEREAS,** the idea was inspired by a group of Hadiya's friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods and orange is a color that symbolizes the value of human life; and
- WHEREAS,** anyone can join this campaign by pledging to wear orange on June 3rd, the first Friday in June in 2022, to help raise awareness about gun violence; and
- WHEREAS,** by wearing orange on June 3, 2022 Americans will raise awareness about gun violence and honor the lives of gun violence victims and survivors; and
- WHEREAS,** we renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the wrong hands, and encourage responsible gun ownership to help keep our children safe.

NOW, THEREFORE BE IT RESOLVED ... On behalf of the City Commission of the City of South Bay, FL, we do hereby recognize the first Friday in June, June 3, 2022, to be National Gun Violence Awareness Day. We encourage all citizens to support their local communities' efforts to prevent the tragic effects of gun violence and to honor and value human lives.

PROCLAIMED this 17th Day of May, 2022

Joe Kyles, Mayor

ATTESTED BY:

Natalie Malone, City Clerk

CITY OF SOUTH BAY, FL
CITY WORKSHOP
CITY HALL CHAMBER
TUESDAY, MAY 03, 2022
6:30PM

Present:

Mayor Joe Kyles
Vice-Mayor Betty Barnard
Commissioner Esther Berry
Commissioner John Wilson
Commissioner Taranza McKelvin

Staff:

Natalie Malone, City Clerk
Leondrae Camel, City Manager
Massih Saadatmand, Finance Director
Burnadette Norris-Weeks, Esq., City Attorney

(Full recording/discussion available through the City Clerk/City website)

1. CALL TO ORDER at 6:30pm**2. ROLL CALL****3. DISCUSSION****3.a. Update on Sidewalk Project- 2SBW**

Darlin K. Pyrtle, *Director*

3.b. Presentation:**Rise and Shine Christian Academy Inc.**

Keren-Esther Hosksins, Chief Executive Officer

3.c. Agenda Items**4. ADJOURNMENT**

CITY OF SOUTH BAY, FL
REGULAR CITY MEETING

CITY HALL CHAMBER
TUESDAY, MAY 03, 2022
7:00PM

A Regular City Meeting of the City Commission of the City of South Bay, Florida was called to order by Mayor Joe Kyles in the Commission Chambers at 335 S.W. 2nd Avenue, South Bay, Florida on May 03, 2022 at 7:00 p.m.

(Full recording/discussion available through the City Clerk/City website)

Present:

Mayor Joe Kyles
Vice-Mayor Betty Barnard
Commissioner Esther Berry
Commissioner John Wilson
Commissioner Taranza McKelvin

Staff:

Natalie Malone, City Clerk
Leondrae Camel, City Manager
Massih Saadatmand, Finance Director
Burnadette Norris-Weeks, Esq., City Attorney

1. **CALL TO ORDER, ROLL CALL; PRAYER, PLEDGE OF ALLEGIANCE**
2. **DISCLOSURE OF VOTING CONFLICTS: NONE**
3. **PRESENTATIONS AND PROCLAMATIONS** *(Up to 5 minutes)*
 - 3.a. Proclamation:
53rd Annual Professional Municipal Clerks Week
May 1 - May 7, 2022
4. **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE COMMISSION**
 - 4.a. Annie Ifill, Healthier Glades - Citizen Comment

4.b. Rosenwald Elementary School Report, Mr. Hightower

- This Week: Teachers Appreciation Week and FSA/ELA testing: 4th and 5th graders
- 5/6/22: Author Sherry Wriston visit 2nd grade students
- 5/9-5/10/22: FSA Math testing (3rd -5th grade)
- 5/16-17/22: Science testing followed by Diagnostic Testing
- 5/23/2022: **Promotional Ceremony** at 9:00 am in the cafeteria
- 5/25/2022: Honor Roll Breakfast
- 5/26/2022: Last day of School

Motion made:

that the Commission use Discretionary funds (in the amount of \$300 to provide some kind of breakfast refreshments for the teachers, letting them know how much we appreciate them and collective staff.

**Moved By: Commissioner Berry
Second By: Vice-Mayor Barnard**

COMMISSION	VOTE
Mayor Kyles	YES
Vice Mayor Barnard	YES
Commissioner Berry	YES
Commissioner McKelvin	YES
Commissioner Wilson	YES

4c. Mother's Day Event: Saturday, May 07, 2022 at Cox Park

Time: 1:00pm

*announced by Vice-Mayor Barnard,
Commissioners and Community Residents Event*

5. 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 Commission, or person so requests, in which the item will be removed from the general order of business and considered in its normal sequence on the Agenda.

**5.a. Regular City Workshop and City Meeting
Approval of City Minutes - April 19, 2022****5.b. Regular City Workshop and City Meeting
Approval of Meeting Agenda- May 03, 2022**

**Moved by: Commissioner Berry
Seconded by: Vice-Mayor Barnard**

COMMISSION	VOTE
Mayor Kyles	YES
Vice Mayor Barnard	YES
Commissioner Berry	YES
Commissioner McKelvin	ABSTAIN
Commissioner Wilson	YES

6. RESOLUTIONS- (Non- Consent) and Quasi-Judicial Hearing, if applicable)

7. ORDINANCE

7.a. ORDINANCE NO. 03-2022:

Second and Final Reading

A ORDINANCE OF THE CITY COMMISSION FOR THE CITY OF SOUTH BAY, FLORIDA, AMENDING CHAPTER 10 OF THE CITY OF SOUTH BAY'S CODE OF ORDINANCES ENTITLED "ELECTIONS", SPECIFICALLY AMENDING ARTICLE II, SECTION 10-27 ENTITLED "ABSENTEE BALLOTING" TO CHANGE THE TITLE TO "SUPERVISOR OF ELECTIONS" AND TO DEFINE THE CITY'S SUPERVISOR OF ELECTIONS AS THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS; TO AMEND ARTICLE III, OF THE CITY OF SOUTH BAY'S CODE OF ORDINANCES ENTITLED "CANDIDATES" TO SPECIFICALLY AMEND SECTION 10-50 ENTITLED "QUALIFYING DATES" TO CHANGE THE TIME OF QUALIFYING FROM NOT LATER THAN 30 DAYS PRIOR TO THE ELECTION, NOR MORE THAN 60 DAYS PRIOR TO THE ELECTION TO NO LATER THAN THE 95th DAY BEFORE THE ELECTION; PROVIDING FOR ADOPTION OF REPRESENTATIONS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

Mayor Kyles announced:

- *Ordinance 03-2022 is open to the Public for questions/comments:*

No questions/comments were made by the public

- *Ordinance 03-2022 is open to the Commission for discussion and approval*

Moved By: Commissioner Wilson

Second By: Commissioner McKelvin

COMMISSION	VOTE
Mayor Kyles	YES
Vice Mayor Barnard	YES
Commissioner Berry	YES
Commissioner McKelvin	YES
Commissioner Wilson	YES

8. ROSENWALD ELEMENTARY SCHOOL (*see 4.b.*)

9. FINANCE REPORT

- 9.a.** Accounts Payable Report-April 29, 2022

10. CITY CLERK REPORT

11. CITY MANAGER REPORT

12. CITY ATTORNEY REPORT

13. FUTURE AGENDA ITEMS

- 13.a.** *Commissioner Berry:*

- Strategic Planning

14. COMMISSIONER COMMENTS FOR THE GOOD OF THE ORDER

- 14.a. Commissioner Mckelvin**

- Thank you for coming out and supporting your local government
- Keep his family in your prayers, wife will be delivering soon
- Bereaving families, you are continuously in our prayers; the Fosters and the Witchard families

- 14.b. Commissioner Wilson**

- Thanks for coming out
- Individual Acknowledgments
- Keep us in your prayers
- Addresses bereaving families

14.c. Commissioner Esther Berry

- Always a pleasure to see you

Upcoming:

- Proclamation for Mr. Clarence E. Anthony
- Proclamation for 30th Year Celebration PBC Library (South Bay)
- **Adult Book Discussion:** PBC Library (South Bay)
Saturday, May 07, 2022 at 12:00 noon

14.d. Vice Mayor Betty Barnard**Past Events**

- *Delta Sigma Theta Sorority Incorporated, Glades Alumnae Chapter:*
Awards Recognition for Achievement (*over 700+ students, K-12*)
May 01, 2022 at 4pm at St. Johns
- *Delta Sigma Theta Sorority Incorporated, Glades Alumnae Chapter:*
Participated in the Great American Cleanup-City of South Bay
- *Delta Sigma Theta Sorority Incorporated, Glades Alumnae Chapter:*
Adopted a road in the City of South Bay
- Thanks to everyone for coming out

14.e. Mayor Joe Kyles

- Ditto to everything that's been said
- Acknowledgements
- Lightings from Twenty Mile Bend to the County Barn, *TPA approved*
- Small business owner Grants awarded, *thank you to City business owners*
- Thank you to everyone

15. ADJOURNMENT

Joe Kyles, Mayor

ATTESTED BY:

Natalie Malone, City Clerk

RESOLUTION NO. 22-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE LETTER OF ACCEPTANCE TO THE MUTUAL AID AGREEMENT FOR HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL BETWEEN SOLID WASTE AUTHORITY OF PALM BEACH COUNTY AND PHILLIPS AND JORDAN, INC.; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of South Bay ("City") desires to execute a Letter of Acceptance to a Mutual Aid Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal between the Solid Waste Authority of Palm Beach County and Phillips and Jordan, Inc.; and

WHEREAS, Phillips and Jordan, Inc. (P&J) and the Solid Waste Authority of Palm Beach County have executed an Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal, Agreement No. 22-201C effective May 8, 2022, through May 7, 2025; and

WHEREAS, Article 33 (Agreements with other Government Entities) of Agreement No. 22-201C states: The CONTRACTOR agrees that this Agreement constitutes an offer to all State Agencies and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement; should the CONTRACTOR deem it in the best interest of their business to do so; and

WHEREAS, the Agreement in no way restricts or interferes with any State Agency or local government agencies of the State of Florida from re-solicitation; and

WHEREAS, an offer has been made to the City to enter into the Mutual Aid Agreement with Phillips & Jordan, Inc. per Article 33 of Agreement No. 22-201C. This offer is made at the same terms and conditions stated in the referenced agreement; and

WHEREAS, the City Commission finds that execution of the Letter of Acceptance is in the best interests of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. Authorization of City Manager. The City Commission of the City of South Bay hereby authorizes the City Manager to execute the attached Letter of Acceptance to a Mutual Aid Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal between the Solid Waste Authority of Palm Beach County and Phillips and Jordan, Inc., as set forth in Exhibit “A” and further authorizes the City Manager to take all necessary and expedient action to effectuate the intent of this Resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this 17th day of May 2022.

Joe Kyles, Mayor

ATTEST:

By: _____
Natalie Malone, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Burnadette Norris-Week, P.A.
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Commissioner Wilson	_____ (Yes)	_____ (No)
Vice-Mayor Barnard	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)



City of South Bay
335 SW 2nd Avenue
South Bay, FL 33493

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 Agreement for Hurricane/Disaster Debris Removal, Reduction and Disposal, Agreement No. 22-201C effective May 8, 2022, through May 7, 2025.

Article 33 (Agreements with other Government Entities) of Agreement No. 22-201C states:

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

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

I would like to offer to the City of South Bay, FL, to enter into this agreement with Phillips & Jordan, Inc. per Article 33 of Agreement No. 22-201C. This offer is made at the same terms and conditions stated in the referenced agreement.

Please return one fully executed original letter upon acceptance.

PHILLIPS & JORDAN, INC.

ACCEPTED: CITY OF SOUTH BAY

Name: _____

Name: _____

Printed Name: Morgan Pierce

Printed Name: _____

Title: President, Power

Title: _____

Date: _____

Date: _____



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGREEMENT FOR

HURRICANE/DISASTER DEBRIS REMOVAL, REDUCTION AND DISPOSAL

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

PHILLIPS AND JORDAN, INC.

AGREEMENT NO. 22-201C

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

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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of May 4th, 2022, (hereinafter referred to as the Agreement) by and between **Solid Waste Authority of Palm Beach County**, a dependent special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and **PHILLIPS AND JORDAN, INC.**, (hereinafter referred to as CONTRACTOR and when referred to collectively with AUTHORITY, the Parties), a Corporation, whose Federal Employer ID Number is **56-0694573**;

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

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

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

ARTICLE 1 - EFFECTIVE DATE AND INCORPORATION OF RECITALS

The foregoing recitals are hereby incorporated herein by reference.

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

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONTRACTOR

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

ARTICLE 3 - COMPENSATION

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

on a per-project basis on an individual Task Order.

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

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

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

ARTICLE 4 - INSURANCE

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

policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** after written notice has been given to the AUTHORITY. CONTRACTOR shall include AUTHORITY as an **Additional Insured** on the General Liability and Automobile Liability insurance policy required by this Agreement. All of CONTRACTOR'S subcontractors shall be required to include AUTHORITY and CONTRACTOR as **Additional Insureds** on all of their liability insurance policies.

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

ARTICLE 5 - STANDARD OF CARE

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

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

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

6.2 INDEMNIFICATION

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

6.3 SURVIVAL

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

ARTICLE 7 - INDEPENDENT CONTRACTOR

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

work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

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

ARTICLE 8 - AUTHORITY TO CONDUCT BUSINESS

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

ARTICLE 9 - COMPLIANCE WITH LAWS

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

ARTICLE 10 - SUB-CONTRACTING

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

ARTICLE 11 - FEDERAL AND STATE TAXES

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

ARTICLE 12 - AVAILABILITY OF FUNDS

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

ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES

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

ARTICLE 14 - DEFAULT

- 14.1 The AUTHORITY may, by written notice of default to the CONTRACTOR, terminate the Agreement in whole or in part if the CONTRACTOR: a) fails to satisfactorily perform any provisions of this Agreement; or b) fails to make progress so as to endanger performance under the terms and conditions of this Agreement; or c) repeatedly fails to perform; or d) does not remedy any such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONTRACTOR, the AUTHORITY may, in its sole

and unfettered discretion, procure goods and/or services similar to those required under this Agreement and the CONTRACTOR shall be liable for any excess costs incurred due to this action.

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

ARTICLE 15 – TERMINATION FOR CONVENIENCE

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

ARTICLE 16 - UNCONTROLLABLE FORCES

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

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

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

ARTICLE 18 – COMMERCIAL NON-DISCRIMINATION POLICY

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

ARTICLE 19 - WAIVER

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

ARTICLE 20 - SEVERABILITY

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

ARTICLE 21 - ENTIRETY OF AGREEMENT AND MODIFICATION

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

ARTICLE 22 - SUCCESSORS AND ASSIGNS

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

ARTICLE 23 - CONTINGENT FEES

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

ARTICLE 24 - TRUTH-IN-NEGOTIATION CERTIFICATE

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

ARTICLE 25 - OWNERSHIP OF DOCUMENTS

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

ARTICLE 26 - PUBLIC RECORDS, ACCESS AND AUDITS

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

26.2 **DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:**

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

RECORDS MANAGER

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

7501 NORTH JOG ROAD

WEST PALM BEACH, FL 33412

561-640-4000 EXT. 4606

RECORDSCUSTODIAN@SWA.ORG

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

- 26.8 CONTRACTOR shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency (FEMA) sub-grantee as required by 2 CFR 200.333. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.
- 26.9 In the event records retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with the State of Florida requirements.

ARTICLE 27 - INSPECTOR GENERAL

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

ARTICLE 28 - NOTICE

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

AS TO AUTHORITY

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

AS TO CONTRACTOR

Phillips and Jordan, Inc.
10142 Parkside Drive
Suite 500
Knoxville, TN. 37922

Attention: Tommy Webster, Program Manager – Disaster Services
Office No.: 865-392-3013 Fax No.: 865-688-8369 E-Mail: twebster@pandj.com

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other

party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

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

ARTICLE 29 - CONTRACT ADMINISTRATION

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

ARTICLE 30 - KEY PERSONNEL

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

Tommy Webster – Contract Manager, Operations/Project Manager
Cell No.: 828-644-3222 E-Mail: twebster@pandj.com

Morgan Pierce – Mission Executive
Cell No.: 919-740-3250 E-Mail: mpierce@pandj.com

Eric Hedrick – Mission/Operations Manager
Cell No.: 813-714-9471 E-Mail: ehedrick@pandj.com

Matthew Mooneyham– Client/Project Manager
Cell No.: 850-530-7151 E-Mail: matthew.mooneyham@phillipsih.com

Heath Stone – Operations/Project Manager
Cell No.: 865-392-3057 E-Mail: hstone@phillipsih.com

ARTICLE 31 – EQUAL BUSINESS OPPORTUNITY PROGRAM:

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

31.1 Affirmative Procurement Initiative (API):

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

ARTICLE 32 - SCRUTINIZED COMPANIES

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

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

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

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

ARTICLE 33 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

- 33.1 The CONTRACTOR agrees that this Agreement constitutes an offer to all State and local government agencies of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONTRACTOR deem it in the best interest of their business to do so.
- 33.2 The Agreement in no way restricts or interferes with any State or local government agencies of the State of Florida from re-solicitation.

ARTICLE 34 – THIRD PARTY BENEFICIARY DISCLAIMER

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

ARTICLE 35 – E-VERIFY – EMPLOYMENT ELIGIBILITY

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

ARTICLE 36 – CONFIDENTIALITY

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

ARTICLE 37 – PAYMENT ADJUSTMENT SCHEDULE

37.1 The AUTHORITY acknowledges the fluctuating nature of prices.

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

The rates shall be adjusted as follows:

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

For example:

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

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

Formula:

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

Calendar:

Annual Payment Adjustment Calendar

April 2023	April 2024
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Extension Clause Annual Payment Adjustment Schedule

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

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

The rates shall be adjusted as follows:

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

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

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

Formula:

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

For example:

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

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

ARTICLE 38 – ORDER OF AGREEMENT ACTIVATION/LOCATION ASSIGNMENT

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

ARTICLE 39 – TASK ORDER/PERFORMANCE

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

ARTICLE 40 – BONDS

CONTRACTOR shall maintain a Proposal Bond in the sum of \$500,000. The CONTRACTOR's Proposal Bond will be

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

ARTICLE 41 – FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273

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

ARTICLE 42 – BUY AMERICA REQUIREMENTS

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

ARTICLE 43 – DISADVANTAGED BUSINESS ENTERPRISES

- 43.1 This provision shall supplement Article 31 "Equal Business Opportunity Program" of the Agreement. The Agreement is subject to the requirements of 49 CFR Part 26. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13). Upon request, the CONTRACTOR will provide the AUTHORITY with a copy of each subcontract it enters into.
- 43.2 The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR's receipt of

payment for that work from the AUTHORITY. The CONTRACTOR may not hold any retainage from its subcontractors unless pursuant to an agreement approved by the AUTHORITY. The CONTRACTOR shall return all retainage payments withheld within thirty (30) days after the subcontractor's work has been satisfactorily completed.

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

ARTICLE 44 – CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

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

ARTICLE 45 – ACCESS TO RECORDS AND THEIR RETENTION

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

ARTICLE 46 – AUDIT REQUIREMENTS

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

ARTICLE 47 – NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

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

ARTICLE 48 – AMERICANS WITH DISABILITIES ACT

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

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

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

ARTICLE 50 – CONVICT LABOR PROHIBITION

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

ARTICLE 51 – CERTIFICATION REGARDING LOBBYING ACTIVITIES

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

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

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

ARTICLE 53 – NO OBLIGATION BY FEDERAL GOVERNMENT

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

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

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

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

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

WITNESS:

1.

2.

By:

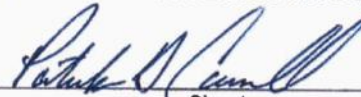
Daniel Pellowitz
Executive Director

(SEAL)

APPROVED AS TO LEGAL SUFFICIENCY:

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

APPROVED AS TO TERMS AND CONDITIONS:


Signature
Patrick D. Carroll
Print Name
COO
Title

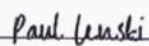
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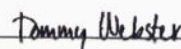
PHILLIPS AND JORDAN, INC.:


Corporate Secretary


Authorized Signature

WITNESS:

1. 

2. 

Morgan Pierce
Print Name

President, Power
Title

4/18/2022
Date

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

Agreement No. 22-201C

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EXHIBIT "A"**SCOPE OF WORK****1. PROJECT DESCRIPTION AND REQUIREMENTS:**

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

2. INTRODUCTION:

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

EXHIBIT "A"

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

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

3. PLANNING STANDARD FOR DEBRIS REMOVAL AND DISPOSAL:

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

4. DEBRIS MANAGEMENT:

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

EXHIBIT "A"

- C. When a major disaster occurs or is imminent, the AUTHORITY intends to contact the highest two (2) or three (3) ranked CONTRACTORS holding debris removal and disposal Agreements to advise them of the AUTHORITY'S intent to activate the Agreement(s). Debris removal will generally be limited to debris in, upon, or brought to county residential private and public streets and roads, rights-of-way, municipal properties and facilities, and other public sites (this includes debris from customers assessed for residential solid waste and recycling collection services by the AUTHORITY). The CONTRACTOR will be responsible for determining the method and manner of debris removal and lawful disposal operations. Disposal of debris will be at AUTHORITY approved TDMS or landfill sites. The CONTRACTOR will be responsible for the lawful disposal of all debris and debris-reduction by-products generated at all TDMS.
- D. When a major disaster occurs or is imminent, the AUTHORITY will initially send out an Alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the AUTHORITY. Subsequently, the AUTHORITY will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the AUTHORITY within 24 hours of receiving such Task Order, to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. This first Task Order will also direct the CONTRACTOR to execute the required Performance and Payment Bond. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane or major flood. Depending on the nature of the storm and circumstances, the AUTHORITY may activate more than one (1) CONTRACTOR. CONTRACTOR(S) will generally be activated in order of final ranking.
- E. Specific task orders will be issued to select CONTRACTORS based on the best interest of Palm Beach County. The AUTHORITY reserves the right to assign work or task orders to various CONTRACTORS based on capability. The AUTHORITY does not guarantee a cradle to grave pricing arrangement but reserves the right to pick and choose CONTRACTORS based on ranking.
- F. The general concept of debris removal operations includes multiple, scheduled passes of each site, location, or right-of-way. This will allow residents to return to their properties and bring debris to the private and public right-of-way as recovery progresses. The AUTHORITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.
- G. The AUTHORITY will make every effort to identify strategically located public and private TDMS throughout the county prior to a natural disaster. Depending upon the severity of the natural disaster, additional public and private TDMS will be identified as needed.
- H. The CONTRACTOR will operate the public and private TDMS and only CONTRACTOR vehicles and others specifically authorized by the AUTHORITY will be allowed to use the sites. Only one (1) level of subcontractor will be allowed to operate the sites. There will be no multi-tiered subcontractors (sub of a sub) allowed to operate TDMS. The CONTRACTOR is responsible for all activity at TDMS operated by their subcontractor and must have an employee on site at all times to oversee daily operations. **The locations of both publicly and privately owned sites currently under consideration are shown on Attachment B.** Additional public and privately owned TDMS may become available as plans develop. The availability of both private and public TDMS may change during the term of the Agreement.

EXHIBIT "A"

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

5. SCOPE OF WORK/OVERVIEW:

This section is divided into three (3) subsections:

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

EXHIBIT "A"

- A. Specific work authorizations by the AUTHORITY will be through written Task Orders. Task Orders will define the job to be accomplished, location of job, timeframe for completion, rates to be used, etc. Any job with requirements or rates not covered by this Proposal will be negotiated. The AUTHORITY reserves the right to extend operations on a weekly basis. Task Orders will be executed bilaterally. Performance will be by the metrics established in the Task Order(s). After 1/3 and again after 2/3 of the stipulated number of days of work in the Task Order have elapsed, the CONTRACTOR(S) shall provide written progress report to the AUTHORITY for review and acceptance. The AUTHORITY shall have the right to correct for CONTRACTOR'S default or underperformance by any means it deems in its best interest at the CONTRACTOR'S expense.
- B. The CONTRACTOR shall commence mobilization immediately upon receipt of the mobilization Task Order meeting the following progress patterns: 48 hours- collection activity within assigned Collection Service Area. Within ten (10) calendar days CONTRACTOR shall have 100% of all necessary equipment operating within all Collection Service Areas. This represents a minimum response schedule and does not restrict an earlier response. Subsequently, the AUTHORITY may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated Collection Service Areas established by the AUTHORITY. Each Task Order will be uniquely and sequentially numbered.
- C. The CONTRACTOR is authorized to collect debris during daylight hours, seven (7) days per week. Any deviations from this schedule will require AUTHORITY approval.
- D. The CONTRACTOR must be duly licensed to perform the work in accordance with the State of Florida statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the Agreement. Copies of all permits shall be submitted to the AUTHORITY's Director, Customer Information Services prior to issuance of the first Task Order.
- E. The quantity of work required to complete the Agreement resulted from this RFP is estimated. The actual effort required may be more or less than the estimated amount shown in the Proposal Form 3 – Price Proposal. Payment will be made at the unit rates proposed. The output will be verified by the AUTHORITY's Director, Customer Services in the daily operational report. Should hourly rates be used to pay for certain equipment other than preventative maintenance, not in excess of fifteen (15) minutes in a normal workday, will be paid at the regular hourly rate. Preventative maintenance or down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes will be considered unacceptable work and non-payment of that time will be rounded off to the half hour of all hours where delays occur. Preventative maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment. Fueling of equipment will be considered as part of preventative maintenance.

EXHIBIT "A"

- F. The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this Agreement. Corrections for any such violations shall be at no additional cost to the AUTHORITY.
- G. The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- H. The CONTRACTOR shall provide contact information for all key personnel to the AUTHORITY that shall include name, phone number, cellular phone number and email address. The CONTRACTOR and its agents shall respond in a timely manner to all AUTHORITY inquiries at all times.

6. DEBRIS REMOVAL AND DISPOSAL OPERATIONS**6.1 General:**

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

6.2 Services:

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

EXHIBIT "A"**6.2.1 Removal of Hazardous Leaning Trees and Hanging Limbs**

- a) Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to remove all hazardous trees twelve inches (12") or greater in diameter, measured three feet (3') from the base of the tree or chest height and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way. Further, debris generated from the removal of hazardous trees and hanging limbs two inches (2") or greater existing in private and public right-of-way will be placed at the public right-of-way for removal as vegetative debris. Hazardous leaning trees less than twelve inches (12") in diameter, measured three feet (3') from the base of the tree or at chest height, will be flush cut, and placed on the public right-of-way to be removed as vegetative debris. The AUTHORITY will not compensate the CONTRACTOR for leaning trees less than twelve inches (12") in diameter on a unit rate basis.
- b) Removal and transportation of hazardous trees twelve inches (12") or greater in diameter and hanging limbs two inches (2") or greater in diameter existing in private and public right-of-way will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of leaning trees will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for leaning or hazardous trees to be removed and eligible for reimbursement, the tree must satisfy a minimum of one (1) of the following requirements:
 - i) The tree is leaning in excess of 30° degrees in a direction that poses an immediate threat to public health, welfare, and safety.
 - ii) The tree is dead, twisted, or mangled as a direct result of the storm and a certified arborist can attest to the fact that the tree will die and potentially create a falling hazard to the public.

6.2.2 Removal of Hazardous Stumps

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

EXHIBIT "A"

private and public right-of-way and private property will be performed as identified by the AUTHORITY. All disaster specific eligibility guidelines regarding size and diameter of hazardous stumps will be communicated to the CONTRACTOR, in writing, by the AUTHORITY. In order for hazardous stumps to be removed and eligible for reimbursement, the stump must satisfy the following requirement:

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

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

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

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

Work may include:

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

6.2.4 Hourly Rate Clearing:

- a) From 0-70 hours following a disaster CONTRACTOR, as designated by the AUTHORITY, shall provide the clearing services on an hourly rate that shall include the following:
 - (i) Clear debris from emergency evacuation routes, access roads to critical facilities, and primary roadways.

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

6.3 Equipment:

- A. All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport that will permit the trucks to be filled to capacity. Cyclone fence may be used as temporary tailgates if they comply with the following specifications:
- 1. Fencing must be permanently attached to one side of the truck bed.
 - 2. After loading, the fencing must be tied to the other side of the truck bed at two places with heavy gauge wire.
 - 3. Fencing must extend to the bottom of the bed.

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

6.4 Securing Debris

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

EXHIBIT "A"**6.5 Equipment Signage**

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

6.6 Other Considerations

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

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

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

7.2 TDMS Services

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

7.2.2 TDMS Operations and Material Processing

- a. TDMS operations and material processing shall be compensated in accordance with the unit prices provided in the Proposal Form 3 - Price Proposal. The CONTRACTOR shall provide equipment, operators, and laborers for TDMS operations as specified by Task Order. Unit prices provided in the Proposal Form 3 - Price Proposal, shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, lodging and insurance)

EXHIBIT "A"

all equipment under this Agreement. Each Inspection Tower shall be equipped with two (2) portable toilets. Toilets shall be provided immediately upon completion of tower assembly. CONTRACTOR shall provide a water truck for the purpose of applying to site surface to minimize dust. The AUTHORITY shall provide a front-load garbage container and collection service of the container at each TDMS. CONTRACTOR shall be responsible for cleaning up all trash and litter generated on the site from daily operations and depositing into the container for collection. The entrance roadway and surrounding area within ½ mile of the site's entrance shall be cleaned daily by the CONTRACTOR. All pre-storm identified sites shall be opened by the CONTRACTOR within three (3) calendar days after receiving approval from the AUTHORITY to operate the TDMS. Failure to open sites with proper equipment and necessary personnel will result in liquidated damages of \$10,000 per day. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, lodging, meals, and any other costs. The work shall consist of managing the operations of a TDMS and performing debris reduction by air curtain incineration and/or grinding of storm generated debris as directed by the AUTHORITY Emergency Management Coordinator

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

EXHIBIT "A"

deposited in manageable piles.

7.3 Reporting

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

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

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

7.4 Other Considerations

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

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

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

EXHIBIT "A"**8. PROCESSING, LOADING AND HAULING MATERIAL:**

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

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

1. Quantity (loads and cubic yards)
2. Owner information
3. Site where mulch / reduced yard waste material generated at TDMS is disposed, to include address/GPS location.
4. AUTHORITY will determine final private or public Construction/Demolition debris disposal/recycling facility.

9. MISCELLANEOUS REQUIREMENTS**9.1 TDMS Foreman**

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

9.2 TDMS Night Foreman

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

9.3 TDMS Management Plan

- A. Once the TDMS is identified by the AUTHORITY, the CONTRACTOR will provide a Site Management Plan.
- B. Three (3) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address the following functions:
 1. Access to site
 2. Site preparation -clearing, erosion control, and grading
 3. Traffic control procedures

EXHIBIT "A"

4. Safety
5. Segregation of debris
6. Location of ash disposal area, hazardous material containment area, CONTRACTOR work area, and inspection tower
7. Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
8. Specific plan including and location for the final disposal destination of the mulch/wood chips generated at the public or private TDMS.

9.4 Inspection Tower

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

9.5 Grinding Operation

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

9.6 Household Hazardous Waste Containment Area

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

10. PERFORMANCE OF CONTRACTOR

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

EXHIBIT "A"

- B. The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:
 - 1. Failure to open pre-storm identified sites within three (3) calendar days of after being tasked by the AUTHORITY liquidated damages of \$10,000 per day for each day not opened.
 - 2. Closure of TDMS due to CONTRACTOR equipment or operational failures liquidated damages of \$25,000 per day, for each day site must remain closed.
- C. Failure to provide back-up grinder(s) within 24 hours of equipment breakdown liquidated damages of \$2,000 per hour per approved grinding hours of operation per day.
- D. CONTRACTOR may also be subject to non-payment and liquidated damages of \$200 for each occurrence of the following infractions:
 - 1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.
 - 2. Loads not properly tarped or otherwise covered.
 - 3. Mixing debris hauled from other sources with debris hauled under this Agreement.
 - 4. Mixing vegetation debris with C & D material.
- E. CONTRACTOR may be immediately terminated and not paid for the following:
 - 1. Collection of any non-eligible, non-AUTHORITY approved stumps or debris.
 - 2. Moving to another designated Collection Service Area without prior AUTHORITY approval.
 - 3. Failure to provide service in accordance with guidelines set forth by FEMA and the AUTHORITY.
 - 4. Soliciting work from private citizens or others to be performed in the designated Collection Service Area during the period of this Agreement.
 - 5. Alteration of placards placed on certified trucks and/or trailers.

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

EXHIBIT "B"

FEE SCHEDULE

PROPOSAL FORM 3 – PRICE PROPOSAL

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

ITEM/DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE PER CY	EXTENSION
1.0 Public Property and Right of Way Collection, Loading and Hauling to a designated TDMS.				
A. Vegetation	2,500,000	CY	9.90	24,750,000
B. Construction Debris / Mixed Debris	500,000	CY	9.90	4,950,000
2.0 TDMS operation to include placement of monitoring towers, portable toilets, keeping on-site and adjacent roads area clean of trash and garbage, debris acceptance, pile management, and Phase I Reclamation.	3,000,000	CY	2.35	7,050,000
3.0 Processing of debris through grinding and/or chipping.	2,500,000	CY	2.70	6,750,000
4.0 Loading, hauling and disposing wood chips to final destination. <i>(This rate includes disposal cost)</i>	1,000,000	CY	9.60	9,600,000
5.0 Volume reduction through air curtain incineration.	2,500,000	CY	2.40	
6.0 Loading and hauling of construction debris and/or mixed debris from TDMS to a permitted C&D recycling facility or any other designated Disposal Facility. <i>(This rate shall not include disposal cost). Based on miles from TDMS to final destination– 1 way.</i>				
A. 0 ≤ 20 miles	500,000	CY	4.80	
B. > 20 ≤ 50 miles	500,000	CY	6.60	
C. > 50 ≤ 100 miles	500,000	CY	8.70	
AVERAGE: (Item 6.0 A-C)			6.70	
AVERAGE: (Item 6.0 A-C) X 500,000 CY =				\$ 3,350,000
TOTAL PROPOSAL PRICE: (Items 1.0 - 4.0; 6.0)				\$ 56,450,000

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

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

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

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

TOMS SET-UP AND CLOSURE AND DEBRIS CLEARANCE FOR ACCESS - OPTIONAL USE BY COUNTY AND OTHER GOVERNMENTAL ENTITIES			
EQUIPMENT AND LABOR RATES			
EQUIPMENT TYPE	HOURLY EQUIPMENT RATE	HOURLY LABOR RATE	TOTAL HOURLY RATE
Bobcat Loader	46.31	50.21	96.52
Crew Foreman w/ Cell Phone and Pickup	13.19	63.60	76.79
Dozer, Tracked, D5 or similar	54.45	50.21	104.66
Dozer, Tracked, D6 or similar	81.39	50.21	131.60
Dozer, Tracked, D7 or similar	115.88	50.21	166.09
Dozer, Tracked, D8 or similar	145.56	50.21	195.77
Dump Truck, 18 CY-20 CY	54.88	41.84	96.72
Dump Truck, 21CY-30 CY	62.92	41.84	104.76
Generator and Lighting	11.69	N/A	11.69
Grader w/ 12' Blade	85.50	50.21	135.71
Hydraulic Excavator, 1.5 CY	67.61	50.21	117.82
Hydraulic Excavator, 2.5 CY	98.13	50.21	148.34
Knuckleboom Loader	175.25	50.21	225.46
Laborer w/ Chain Saw	4.25	42.17	46.42
Laborer w/ small tools, traffic control, flag person	11.50	33.48	44.98
Lowboy Trailer w/ Tractor	85.44	41.84	127.28
Operations Manager w/ Cell Phone and Pickup	13.19	108.80	121.99
Pickup Truck, 5 Ton	13.19	N/A	13.19
Soil Compactor 81 HP+	60.19	50.21	110.40
Soil Compactor to 80 HP	53.00	50.21	103.21
Soil Compactor, Towed Unit	51.88	50.21	102.09
Truck, Flatbed	32.59	41.84	74.43
Tub Grinder, 800 to 1,000 HP	523.57	50.21	573.78
Water Truck	67.13	41.84	108.97
Wheel Loader, 2.5 CY, 950 or similar	71.45	50.21	121.66
Wheel Loader, 3.5-4.0 CY, 966 or similar	136.88	50.21	187.09
Wheel Loader, 4.5 CY, 980 or similar	149.00	50.21	190.21
Wheel Loader-Backhoe, 1.0-1.5 CY	55.13	50.21	105.34
Other – Please List			

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

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January 2022

EXHIBIT "B"**PROPOSAL FORM 3 – PRICE PROPOSAL****PART C – UNIT COST SCHEDULE**

ITEM	HAZARDOUS STUMP REMOVAL, HAULING, AND DISPOSAL	UNIT	UNIT COST
1.	24-inch diameter to 48.99-inch diameter	Stump	450.00
2.	49-inch diameter and greater	Stump	675.00
3.	Stump Fill Dirt – Fill dirt for stump holes after removal	CY	25.00
HAZARDOUS HANGING LIMBS (HANGERS), AND HAULING To include removal of all hanging limbs. Limbs to be cut and placed on the right of way for collection as vegetative debris.			
4.	2-inch diameter and greater	Tree	110.00
HAZARDOUS TREE REMOVAL, AND HAULING Trees to be flush cut at ground level and placed on the right of way for removal as vegetative debris.			
5.	6-inch diameter to 12.99-inch diameter	Tree	100.00
6.	13-inch diameter to 24.99-inch diameter	Tree	200.00
7.	25-inch diameter to 48.99-inch diameter	Tree	375.00
8.	49-inch diameter and greater	Tree	525.00

NOTE:

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

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

COLLECTION SERVICE ONLY	
EQUIPMENT	DAILY RATE (10 HRS/DAY)
Knuckleboom Loader and Operator	\$2,750.00

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January 2022

ATTACHMENT "A"**SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY**

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

**TASK ORDER
DISASTER DEBRIS MANAGEMENT**

TO _____
Task Order No.

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

Project: _____

Specific Work to be performed: _____

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

Method of Payment: _____

Estimated Cost of this Task Order: \$ _____

Contractor Signature: _____ Date: _____

AUTHORITY Signature: _____ Date: _____

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

ATTACHMENT "C"

PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE

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

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

PROJECT MANAGEMENT

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

Record Keeping

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

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

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

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

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

ATTACHMENT "D"**MOBILIZATION SCHEDULE**

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

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

ATTACHMENT "E"

FHWA-1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT "F"**BUY AMERICA REQUIREMENTS**

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

ATTACHMENT "G"

PERFORMANCE AND PAYMENT BOND

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

THE CONDITION OF THIS BOND is that if Principal:

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

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

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

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

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

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

PRINCIPAL: _____

By: _____
Signature

WITNESS:

1. _____

2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

SURETY: _____

By: _____
Signature

WITNESS:

1. _____

2. _____

Name: _____

Title: _____

Address: _____

Telephone: _____

NOTE:

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

IMPORTANT:

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

RESOLUTION NO. 23-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED CONTRACT FOR THE PROVISION OF AN ELECTION DAY POLLING LOCATION BETWEEN THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS OFFICE AND THE CITY OF SOUTH BAY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, a polling location is needed in the City of South Bay ("City") for the Primary and General Election scheduled to be held on August 23, 2022 and November 8, 2022, respectively; and

WHEREAS, the City and the Palm Beach County Supervisor of Elections desire that the South Bay City Hall Commission Chambers, located at 335 SW 2nd Avenue, South Bay, FL 33493, be a polling location; and

WHEREAS, the City and the Palm Beach County Supervisor of Elections Office further desire to enter in a contract consistent with the terms and conditions set forth in Exhibit "A", attached hereto; and

WHEREAS, the City Commission for the City of South Bay finds that authorizing the City Manager to enter into the Contract for an Election Day Polling Location with the Palm Beach County Supervisor of Elections Office is in the best interests of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. Authorization of City Manager. The City Commission of the City of South Bay hereby authorizes the City Manager to execute the Contract for an Election Day Polling Location between the City of South Bay and the Palm Beach County Supervisor of Elections Office, attached hereto as Exhibit "A", for usage of the City's Commission Chambers located at 335 SW 2nd Avenue, South Bay, FL 33493. The City Manager is further authorized to take all necessary and expedient action to effectuate the intent of this Resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and **ADOPTED** this 17th day of May 2022.

Joe Kyles, Mayor

ATTEST:

By: _____
Natalie Malone, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Burnadette Norris-Week, P.A.
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Commissioner Wilson	_____ (Yes)	_____ (No)
Vice-Mayor Barnard	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)



CONTRACT FOR ELECTION DAY POLLING LOCATION

This Contract is made as of the _____ day of _____, 20____, by and between Palm Beach County Supervisor of Elections, a Political Subdivision of the State of Florida, by and through the Palm Beach County Board of Commissioners, hereinafter referred to as SUPERVISOR, and **(NAME)SOUTH BAY COMMISSION CHAMBERS (ADDRESS) 335 SW 2ND AVE SOUTH BAY FL, 33493** authorized to do business in the State of Florida, hereinafter referred to as FACILITY.

PRECINCT NUMBER(S) TBD AFTER REDISTRICTING*: _____

*Redistricting happens every 10 years following the Census. There is a possibility that the precinct boundaries in your area could change prior to the scheduled elections in 2022.

PRECINCT NUMBER(S) PRIOR TO REDISTRICTING: 6016 *, 6018, 6038*

In consideration of the mutual promises contained herein, SUPERVISOR and FACILITY agree as follows:

ARTICLE 1 - SERVICES

FACILITY'S responsibility under this Contract is to provide Election Day polling location services for the following Primary and General Election Days scheduled for the countywide 2022 Election Cycle, as well as make a good faith effort to accommodate any additional Special Election Days that may be required due to unforeseen circumstances.

A. Primary Election Day - Tuesday, August 23, 2022

B. General Election Day - Tuesday, November 8, 2022

SUPERVISOR'S representatives/liaisons during the performance of this Contract shall be Ghitza Serrano-Velez, (561)656-6211, ghitza@votepalmbeach.gov and Erica Aquino (561)656-6219 or erica@votepalmbeach.gov.

FACILITY'S representative/liaison during the performance of this Contract shall be (Name, Title)

_____, telephone no. _____,

mailing address (if different) _____.

Name and telephone number of emergency contact person before and after regular business hours, **MUST be available to answer in the event of any emergency:**

Name

Work Telephone

Home/Cellphone

Email



Wendy Sartory Link

Palm Beach County Supervisor of Elections

[f](#) [t](#) [i](#) [in](#) [v](#) @VotePalmBeach

VotePalmBeach.gov

240 South Military Trail, West Palm Beach, FL 33415 561.656.6200 561.656.6287

Name and telephone number of contact person at Polling Place on Election Day:

Name	Work Telephone	Home/Cellphone	Email
------	----------------	----------------	-------

Two alternate contacts:

Name	Work Telephone	Home/Cellphone	Email
------	----------------	----------------	-------

Name	Work Telephone	Home/Cellphone	Email
------	----------------	----------------	-------

ARTICLE 2 - SCHEDULE

FACILITY shall agree to allow voters, poll workers, poll watchers, other designated campaign representatives, and representatives of the SUPERVISOR to enter and exit premises **without delay or screening of any kind** on Election Day, until completion of voting. This shall include but is not limited to:

- A. None of the above shall be required to present identification upon entry, including at any gate.
- B. None of the above shall be required to undergo health screening upon entry.

FACILITY shall agree to accept delivery of equipment and supplies at a time and date to be determined by FACILITY and SUPERVISOR prior to Election Day. FACILITY and SUPERVISOR will also determine a date and time for SUPERVISOR to remove equipment and supplies.

Please provide the days and **hours of operation** at the location when access to the premises will be available for delivery and pickup of voting equipment. An election official will contact you to make arrangements:

FACILITY shall agree to provide a secure location to store Elections Equipment upon delivery to Polling Location and until removal.

Please indicate where election equipment will be stored and how it will be secured:



Wendy Sartory Link

Palm Beach County Supervisor of Elections



@VotePalmBeach

VotePalmBeach.gov



240 South Military Trail, West Palm Beach, FL 33415



561.656.6200



561.656.6287

FACILITY shall agree to allow SUPERVISOR or SUPERVISOR's designee(s) to inspect and set up the designated Polling Room **on the Monday prior to Election Day** (Monday, August 22, 2022 for the Primary Election and Monday, November 7, 2022 for the General Election).

FACILITY shall agree (initial one):

- To open the Polling Location and Polling Room no later than **5:30 A.M.** on Election Day, OR;
- To provide SUPERVISOR or its assignee (Clerk) with a key to the Polling Place.

Please indicate contact information and instructions for delivery of key, if applicable:

FACILITY shall agree to provide from **5:30 A.M.** until completion of voting and clean-up on Election Day (initial all applicable):

- Chairs for election workers (number of chairs provided _____).
- Tables for election workers (number of tables provided _____).
- Access to power outlets (number of power outlets available _____).
- Use of restroom facilities.
- Air conditioning.

ARTICLE 4 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.



Wendy Sartory Link

Palm Beach County Supervisor of Elections

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240 South Military Trail, West Palm Beach, FL 33415 561.656.6200 561.656.6287

ARTICLE 5 - EXCUSABLE DELAYS

FACILITY shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of FACILITY or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies which have been classified by the Governor of Florida or the President of the United States as a State of Emergency and subsequently issue in an Emergency Order allowing for the specific breach of this contract (i.e. an order specifically disallowing use of this or this kind of facility by the public), and abnormally severe and unusual weather conditions which render the Early Voting/Election Day site unusable.

Upon FACILITY'S request, SUPERVISOR shall consider the facts and extent of any failure to perform the work and, if FACILITY'S failure to perform was without its fault or negligence, the Contract Schedule or any other affected provision of this Contract shall be revised accordingly, subject to SUPERVISOR'S rights to change or terminate this Contract at any time.

ARTICLE 6 - ENTIRETY OF CONTRACTUAL AGREEMENT

SUPERVISOR and FACILITY agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

ARTICLE 7 - PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the FACILITY: (i) provides a service; and (ii) acts on behalf of the SUPERVISOR as provided under Section 119.011(2) F.S., the FACILITY shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. All agreements between FACILITY and SUPERVISOR are subject to the requirements provided under Section 119.0701, F.S.

ARTICLE 8 - STATEMENT OF INDEMNITY

SUPERVISOR shall be responsible for damages, as found legally liable for and to the extent permitted by law, arising out of injury or damage to persons or property caused by or resulting from the negligence of the SUPERVISOR or any of its officers or employees. Nothing in this provision shall constitute as a waiver of sovereign immunity.

IN WITNESS WHEREOF, we, the undersigned, do hereby state that we have the authority to bind and obligate as promised herein, SUPERVISOR and FACILITY for purposes of executing this agreement on the dates set forth below.

Wendy Sartory Link, Palm Beach County Supervisor of Elections (Signature)

Date

FACILITY Representative (Signature)

Date



City of South Bay

South Bay City Hall
335 SW 2nd Avenue
South Bay, FL 33493
Telephone: 561-996-6751
Facsimile: 561-996-7950

www.southbaycity.com

Commission

Joe Kyles Sr.
Mayor

Betty Barnard
Vice Mayor

Esther E. Berry

John Wilson

Taranza McKelvin

Leondrae Camel
City Manager

City Clerk
Natalie Malone

Burnadette Norris-Weeks
City Attorney

"An equal Opportunity
Affirmative Action Employer"

To: Honorable Mayor and Commissioners
From: Massih Saadatmand, Finance Director
Thru: Mr. Leondrae Camel, City Manager
Date: May 9, 2022
Ref: Weekly check register

Enclosed, please find the summary of check register as of May 9, 2022:

General Fund

• Utility:		
Comcast	\$	830.94
FPL		6,331.04
PBC Water Utility		2,565.12
• Blusource		3,615.86
• Norris-Weeks, PA		7,021.51
• PBC Sheriff Office		18,657.42
• United Health		11,446.67
• CAP Government		2,112.50
• Marathon		2,164.13
• Coastal Network		1,500.00
• Purchased of supplies, materials and parts		1,581.93 A
• Payment for various services		4,843.04 B
• Payroll Deductions		3,987.64 C
• Other		2,387.70 D
Total	\$	<u>69,045.50</u>

Capital Project Fund

Cap Government/Engineering \$ 4,870.00

Sanitation Fund

Waste Management \$ 23,136.96

AP Check Register Report

City Of South Bay (CSBFND)

5/4/2022 3:18:12 PM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount
14271	1051	MUCK CITY PROJECT	5/4/2022	1,200.00
14272	1053	MARCOS ALPIZA	5/4/2022	300.00
14273	ALLY	ALLY	5/4/2022	725.70
14274	AMAZON CAPITAL SERVIC	AMAZON CAPITAL SERVICES	5/4/2022	82.29
14275	BLUSOURCE	BLUSOURCE	5/4/2022	3,615.86
14276	BURNADETTE NORRIS-W	BURNADETTE NORRIS-WEEKS, PA	5/4/2022	7,021.51
14277	CAP GOVERNMENT	CAP GOVERNMENT	5/4/2022	2,112.50
14278	CLARKE	CLARKE	5/4/2022	581.66
14279	COASTAL NETWORK SOL	COASTAL NETWORK SOLUTIONS, LLC	5/4/2022	1,500.00
14280	COMCAST	COMCAST	5/4/2022	538.19
14281	FORD MOTOR CREDIT CC	FORD MOTOR CREDIT COMPANY LLC	5/4/2022	868.46
14282	FPL	FPL	5/4/2022	6,331.04
14283	LAKE HARDWARE	LAKE HARDWARE	5/4/2022	39.01
14284	MARATHON/MEX BANK	WEX BANK	5/4/2022	2,164.13
14285	PBC SHERIFF'S OFFICE	PALM BEACH COUNTY SHERIFF'S OFFICE	5/4/2022	18,657.42
14286	PETTY CASH	CITY OF SOUTH BAY-PETTY CASH	5/4/2022	287.70
14287	TRC FARM INDUSTRIAL	TRC FARM & INDUSTRIAL SUPPLY INC	5/4/2022	215.33

Non-Electronic Transactions:	46,240.80
Total Transactions:	46,240.80

AP Check Register Report

City Of South Bay (CSBFND)

4/29/2022 10:43:15 AM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount	
14247	1032	CARIBBEAN TIRES	4/29/2022	88.00	B
14248	1050	GULF STREAM COUNCIL, INC.	4/29/2022	225.00	D
14249	AFLAC	AFLAC	4/29/2022	1,453.67	C
14250	BELLE GLADE WHOLES	BIG LAKE SNACK SALES, INC	4/29/2022	158.60	A
14251	CHRISTOPHER E. BENJA	CHRISTOPHER E. BENJAMIN	4/29/2022	660.00	B
14252	CLARKE	CLARKE	4/29/2022	581.66	J
14253	COLONIAL LIFE PROCES	COLONIAL LIFE PROCESSING CENTER	4/29/2022	1,326.30	C
14254	COMCAST	COMCAST	4/29/2022	292.75	
14255	ECONO SIGNS	ECONO SIGNS	4/29/2022	499.64	A
14256	IAMAW	IAMAW	4/29/2022	242.08	C
14257	LAKE HARDWARE	LAKE HARDWARE	4/29/2022	169.31	A
14258	LIBERTY NATIONAL	LIBERTY NATIONAL	4/29/2022	325.96	C
14259	PBC LEAGUE OF CITIES	PALM BEACH COUNTY LEAGUE OF CITIES	4/29/2022	375.00	D
14260	PBC WATER UTILITIES	PALM BEACH COUNTY WATER UTILITIES	4/29/2022	2,565.12	
14261	PERFORMANCE NAPA	PERFORMANCE NAPA	4/29/2022	92.89	A
14262	PRIMESTAR DIGITAL NET	PRIMESTAR DIGITAL NETWORK	4/29/2022	410.00	B
14263	SEASON TO SEASON, LLC	SEASON TO SEASON, LLC	4/29/2022	230.00	L
14264	SOLSTICE BENEFITS IN	SOLSTICE MARKETPLACE	4/29/2022	599.63	C
14265	ST. JUDE PLACE	ST. JUDE PLACE	4/29/2022	40.00	L
14266	UNITED FIRE PROTECTIC	UNITED FIRE PROTECTION, INC.	4/29/2022	335.00	B
14267	UNITED HEALTH CARE	UHS PREMIUM BILLING	4/29/2022	11,446.67	
14268	VRC	VRC	4/29/2022	362.56	B
14269	WALMART (CAPITAL ONE	CAPITAL ONE	4/29/2022	227.86	A
14270	WASHINGTON NATIONAL	WASHINGTON NATIONAL INS. CO.	4/29/2022	97.00	L
Non-Electronic Transactions:				22,804.70	
Total Transactions:				22,804.70	

AP Check Register Report

City Of South Bay (CSBFND)

5/2/2022 9:20:23 AM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount
230	CAP GOVERNMENT	CAP GOVERNMENT	5/2/2022	4,870.00
Non-Electronic Transactions:				4,870.00
Total Transactions:				4,870.00

AP Check Register Report

City Of South Bay (CSBFND)

5/2/2022 9:00:58 AM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount
278	WASTE MANAGEMENT	WASTE MANAGEMENT INC. OF FLORIDA	5/2/2022	23,136.96
Non-Electronic Transactions:				23,136.96
Total Transactions:				23,136.96