

STAND BY AGREEMENT FOR DISASTER RECOVERY SERVICES

THIS AGREEMENT is made and entered into by and between the Village of Wellington, Florida, a Florida municipal corporation through its Village counsel (hereinafter referred to as "Village" or "Wellington") and _____, a _____ (hereinafter referred to as "Contractor" or "Vendor") for debris management services in accordance with the Contract Documents, hereinafter defined.

WITNESSETH:

WHEREAS, Wellington desires to retain the services of a debris management services contractor; and

WHEREAS, Wellington issued Request for Proposal No. _____ "Disaster Recovery Services" (the "RFP") and the Contractor submitted a proposal in response to the RFP (the "Proposal"); and

WHEREAS, Wellington wishes to accept the Contractor's Proposal and enter into this Agreement for the provision of debris management and removal services ("Services") in accordance with this Agreement, the RFP, the Proposal as well as all other Contract Documents defined in Article 2 below.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, Wellington and Contractor agree as follows.

ARTICLE 1. INCORPORATION OF REQUEST FOR PROPOSALS (RFP)

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, requirements, and specifications set forth in the RFP, and the Contractor's Proposal, including all documentation required thereunder. The RFP and the Proposal are attached hereto as **Exhibit "A"** and are incorporated herein by this reference. Any conflicts between this Agreement, the RFP and the Proposal shall be resolved in the following order of precedence: 1) Agreement; 2) RFP; and 3) Proposal, unless either the RFP or the Proposal imposes a greater obligation on Contractor, which in such event said document shall control.

ARTICLE 2. CONTRACT DOCUMENTS

In addition to this Agreement, the following documents shall comprise the contract documents ("Contract Documents"): (a) The RFP and Proposal, including all exhibits attached thereto, which are collectively attached hereto as Exhibit "A"; (b) all Exhibits to this Agreement (whether now attached or which will be attached in the future); (c) the performance and payment bond (if applicable); (d) the Notice to Proceed; and (e) Modifications issued after execution of this Agreement. All of the Contract Documents, including any not attached hereto, are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto. The Contractor must call any such conflict or discrepancy in the Contract Documents to the Village's attention, in writing.

Article 3. SCOPE OF SERVICES

The Contractor shall perform the Services identified in the specifications set forth in the RFP, and shall meet all other requirements set forth in the Contract Documents.

Contractor shall be subject to audit by federal, state, and local agencies pursuant to this Agreement. Contractor understands and agrees that it shall maintain all reports, records, debris reporting tickets, and Agreement correspondence relating to the Services for a period of not less than three (3) years after termination or expiration of this Agreement, subject to Article 14 of this Agreement.

Contractor understands and agrees that it is required to perform at least 30% of the services with its own forces.

Contractor acknowledges and agrees to the "standby" or ongoing nature of the contractual

relationship between the parties and understands that when disaster-related debris management services are required during the Initial Term or any Renewal Term of this Agreement (defined below) that the Village shall issue a separate Notice to Proceed and/or work order for the Contractor setting forth the scope of Services.

ARTICLE 4. COMPENSATION, INVOICES AND PAYMENTS

Wellington shall pay Contractor in accordance with the Request for Proposal Fee Schedule attached hereto as part of **Exhibit "A"** and incorporated herein by this reference. All values set forth in the Fee Schedule included as part of Exhibit "A" and all payments hereunder are inclusive of all licenses, taxes, bonds, insurance, overhead, profit and fees. If any permits are required for the performance of the Services from any governing authorities having jurisdiction over the Services, Contractor shall be responsible for obtaining all required permits and the Village shall pay for the actual cost for such permits upon receipt of invoice demonstrating the costs associated therewith.

4.1 Invoices

Pursuant to the RFP, the Contractor shall submit, both hard copy and electronically in Excel Format, invoices to Wellington on a monthly basis based on completed Services. Specifically, Contractor shall submit its invoices on the 15th of each month. The period covered by each invoice is one month, ending on the 30th of the month.

Each invoice shall show a complete breakdown of the Services performed and the amounts due, together with such data substantiating the Contractor's right to payment and such supporting evidence which may be requested by the Village including, but not limited to: (a) monthly reports required by any federal, state or local requirements including, but not limited to Davis-Bacon Act; (b) a sworn and certified affidavit with each invoice, which recites that all laborers, material suppliers and subcontractors dealing with the Contractor have been paid in full through the date of the prior invoice, with the exception of disputed payments; (c) partial release of lien from Contractor for the current invoice, partial releases of lien and bond claims from all laborers, material suppliers and subcontractors through the date of the last payment made, and submit partial releases of lien conditioned only upon payment from all lienors, through the date of the current invoice, and such other evidence that the Village may reasonably require substantiating that all Services which is the subject of each invoice have been performed. The releases of lien form shall conform to the Florida's Construction Lien Law 713.01 et. seq. and/or Fla. Stat. § 255.05 shall be in such forms as approved by the Village.

4.2 Payment

As applicable, Wellington shall comply with the Florida Prompt Payment Act ("FPPA") and shall pay each invoice within thirty (30) days from receipt. Unpaid invoices shall bear interest in accordance with the FPPA. The Village shall authorize or reject payment within twenty (20) business days of receipt of Contractor's invoice. If the invoice is rejected by the Village as not complying with the requirements of this Article 4, the Village shall notify Contractor in writing and specify the deficiency and action necessary to make the invoice proper. Village will pay Contractor within twenty-five (25) business days of receipt of Contractor's proper and complete invoice.

Village may withhold payment to such extent as may be necessary on account of:

- .1 Defective Services not remedied.
- .2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor.
- .3 Failure of Contractor to make payments properly to subcontractors or suppliers or for material or labor.
- .4 Damage to another subcontractor, supplier, materialmen, party, or person not remedied.

.5 Any other breach of this Agreement by Contractor.

When the above grounds are removed or resolved or Contractor provides a surety bond or a consent of surety satisfactory to Village, which will protect Village in the amount withheld, payment may be made in whole or in part, as applicable.

When the Contractor receives payment from the Village for labor, services or materials furnished by subcontractor and suppliers hired by the Contractor, the Contractor shall remit payment due those parties within ten (10) days after receipt of payment from the Owner, unless otherwise provided for by Florida Law.

The making and acceptance of the payment by Contractor shall constitute a waiver of all claims by Contractor, except those previously made in writing and identified by Contractor as unsettled at the time of the Contractor's receipt of payment.

ARTICLE 5. CONTRACTOR

Contractor represents that it is a properly qualified and licensed contractor for the Services contained in the Contract Documents and in good standing with the State of Florida and is authorized to do business in the State of Florida and with the Village. Contractor further represents that it has read, examined and understands the pertinent Contract Documents and is well qualified and able to perform the Services; that it has a sufficient number of qualified personnel to assure timely performance of the Services; is financially capable of performing this Agreement and is aware and acknowledges the unique "standby" or ongoing nature of the contractual relationship between the parties. Contractor shall supervise and direct the Services using its best skill and attention. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services and shall comply with all applicable OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property. Contractor also recognizes that due to the "standby" nature of the Services, there is a possibility that no Notice to Proceed will be issued and no Services will be required during the Term. In such event, Contractor shall not be entitled to any compensation of any nature.

ARTICLE 6. TERM AND TERMINATION

6.1 Term

This Agreement shall be effective _____ and shall expire on _____, and shall be a 3 year term ("Initial Term"), provided, however, that the parties may, upon mutual written consent, extend this Agreement for two (3) additional one (1) year periods ("Renewal Term").

6.2 Termination

.1 **Termination by Contractor.** If the Village fails to issue payment for a period greater than what is outlined in Article 4 of this Agreement, through no fault of the Contractor, the Contractor may, after ten (10) days written notice to the Village terminate this Agreement unless the Village cures such default and recover from the Village payment for all Services executed through the date of termination, including a reasonable profit thereon not to exceed ten percent (10%), but which total shall never exceed the monetary value stated in the current issued Village's Notice to Proceed and/or work order. This sum shall be Contractor's sole remedy under this Agreement.

.2 **Termination by Village.** If the Contractor cannot satisfy the conditions and obligations imposed by the Contract Documents, or breaches any of the terms of this Agreement then the Village may, without prejudice to any right or remedy and after giving the Contractor three (3) days. (Fridays, Saturdays, Sundays and legal holidays recognized by the Village of Wellington) written notice, terminate this Agreement and finish the Services by whatever method the Village deems expedient. In such case the Contractor shall not be entitled to receive any further payment until any outstanding Services are finished. If the unpaid balance of the outstanding Services exceeds the cost of completing and correcting the Services such excess shall be paid to the Contractor. Contractor shall be responsible for all damages, costs and liabilities incurred by the Village due to any act, omission or breach of the Agreement by the

Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Village. This provision shall in no way limit the Village's right to claims for any additional damages including but not limited to consequential damages. This obligation for payment shall survive termination of this Agreement.

.3 **Termination by Village for Convenience.** The Village may also terminate this Agreement for the Village's convenience and without cause upon three (3) days written notice to Contractor. If the Contractor is terminated for convenience, the Contractor shall be paid for all Services completed through the date of termination, less payments made and any amounts that the Village is entitled to withhold pursuant to the terms of this Agreement and by law. This sum shall be Contractor's sole remedy under this Agreement. The Contractor waives any and all claims for damages resulting from such termination for convenience, including without limitation anticipated profits and any and all damages.

ARTICLE 7. INDEMNIFICATION

The Contractor recognizes that it is an independent contractor and not an agent or servant of Wellington and agrees to indemnify Wellington in the manner set forth herein. Regardless of the coverage provided by any insurance, the Contractor shall indemnify, defend, and hold harmless Wellington, and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Services under this Agreement. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Wellington or Contractor. Nothing contained in the Indemnification provision set forth in **Exhibit "A"** or herein shall be construed or interpreted as consent by Wellington to be sued, nor as a waiver of sovereign immunity beyond the waiver and limitations provided in Section 768.28, Florida Statutes.

ARTICLE 8. INSURANCE

The Contractor shall obtain and maintain during the term of this Agreement all insurance required by the Contract Documents.

ARTICLE 9. BONDS (IF APPLICABLE)

If requested by the Village, the Contractor shall provide a Performance and Payment Bond (separate Performance Bond and separate Payment Bond) of a form deemed accepted to the Village within five (5) days of the issuance of the Notice to Proceed. The Payment and Performance Bond required herein shall be in conformance with Florida Statutes 255.05, approved by Village, executed by a surety company shown in the United States Treasury list of approved companies and authorized to do business in the state of Florida.

The Bonds shall be in the amount of one hundred percent (100%) of the monetary amount stated in the Request for Proposal Fee Schedule attached hereto as part of **Exhibit "A"** and incorporated herein by reference. The Performance and Payment Bonds will be required upon issuance of the Notice to Proceed (NTP) by the Village. The Bonds shall guarantee to the Village the completion and performance of the Service as well as full payment of all suppliers, material, laborers, or subcontractors employed to perform the Services. Notwithstanding the foregoing, the Contractor acknowledges that in the event of a natural disaster the monetary value of aforementioned Fee Schedule may increase depending on the amount of accumulated debris. Consequently, the Contractor will at all times be responsible for increasing the Bonds to mirror the corresponding increase in the Fee Schedule. In no event shall the value of the Fee Schedule ever exceed the value of the Bonds.

ARTICLE 10. COMPLIANCE WITH LAWS

The Contractor shall give all notices, and warrants and represents that the Services will comply with all federal, state and local laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction over the Services. Contractor shall comply with all ordinances, laws and rules of the State of Florida, Village of Wellington, Palm Beach County, FEMA, and Chapter 2 of the CFR, Part 200, applicable to the Services. Contractor shall be liable for any deviation from any laws, ordinances, rules, regulations, and

orders of any public authority even if in strict compliance with the Contract Documents. Contractor shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to any attorney's fees or other expenses incurred by Village in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this paragraph shall survive the termination of this Agreement.

ARTICLE 11. PALM BEACH COUNTY INSPECTOR GENERAL

In accordance with Palm Beach County ordinance number 2011-009, the Vendor understands that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

ARTICLE 12. CONFLICTS.

Contractor shall comply with all conflict of interest provisions found in the Code of Ordinances of Wellington, the Palm Beach County Code of Ethics and Chapter 112, Florida Statutes. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against Village in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of Village in any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this Section.

ARTICLE 13. PUBLIC ENTITY CRIME STATEMENT.

Contractor acknowledges the existence of Section 287.133(2)(a), Florida Statutes ("Public Entity Crimes Act"), which provides, in part, that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Village, may not submit a bid on a contract with Village for the construction or repair of a public building or public work, may not submit bids on leases of real property to Village, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Village, and may not transact business with Village in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this Section by Contractor shall result in termination of this Agreement by Village without penalty.

ARTICLE 14. RECORDS.

14.1 Contractor shall keep such records and accounts and require any and all consultants and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records will be available at all reasonable times for examination and audit by Village and for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHEVELLE ADDIE AT 561-791-4000, CADDIE@WELLINGTONFL.GOV, 12300 FOREST HILL BLVD. WELLINGTON, FL 33414

14.2 The Contractor agrees to provide the Village of Wellington, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the Village of Wellington and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

ARTICLE 15. VILLAGE OF WELLINGTON'S PURCHASING AND PROCUREMENT PROCEDURES MANUAL

Contractor shall comply with all Contractor requirements of the Village of Wellington's Purchasing and Procurement Procedures Manual as adopted by Resolution No. R2014-12.

ARTICLE 16. COMPLIANCE WITH PROCUREMENT REQUIREMENTS OF SUPER CIRCULAR (2 CFR – PART 200)

16.1 The parties hereto acknowledge the Village's compliance with the new Super Circular procurement requirements stated in Sections 200.317-200.326 of Chapter 2 of the CFR, including without limitation all applicable competition requirements, bonding and contractual requirements.

16.2 Notwithstanding the foregoing, pursuant to §200.318(c)(1) of Chapter 2 of the CFR, no employee, officer, or agent of the Village has participated in the selection, award, or administration of this Agreement that has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for this Agreement.

16.3 Pursuant to §200.319(b) of Chapter 2 of the CFR, the Contractor acknowledges that the Village is to conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. Further, all the parties hereto acknowledge and agree that all procurement transactions have been conducted in a manner providing full and open competition consistent with the standards of §200.319 of Chapter 2 of the CFR. In order to ensure objective performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. The Contractor hereby acknowledges that it has not developed or drafted specifications, requirements statements of work, or invitations for bids or the RFP for the Services stated herein.

16.4 Pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), all contractors that apply or bid for an award exceeding \$100,000.00 must file an Anti-Lobbying form certification. The certificate states that the bidder will not or has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with the obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352.

16.5 Super Circular Notice of Contractual Provisions.

Pursuant to §200.326 of Chapter 2 of the CFR, the Village provides the Contractor will notice of the provisions stated below, which if applicable, the Contractor shall comply with all requirements associated therewith.

16.6 SECTION 6002 OF THE SOLID WASTE DISPOSAL ACT

Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act which pertains to procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceed \$10,000.00; procuring solid waste management services in a manner that maximizes energy resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16.7 EQUAL OPPORTUNITY CLAUSE PURSUANT TO 41 CFR CHAPTER 60

In accordance with 41 CFR 60-1.4(b), in accordance with Executive Order 11246, as amended by Executive Order 11375 and implementing regulations at 41 CFR part 60, during the performance of this Agreement, the Contractor agrees as follows:

.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

.3 The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

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

.5 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

.6 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

.7 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this contract may be canceled, terminated,

or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

16.8 DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS

The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5, "Labor Standard Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. In accordance with this statute, the Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor is required to pay wages not less than once a week.

16.9 COPELAND ANTI-KICKBACK ACT

The Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Further:

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

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

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

16.10 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)

.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 (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section

.3 *Withholding for unpaid wages and liquidated damages.* The Village 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 (b)(2) of this section

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

16.11 CLEAN AIR ACT

The Contractor is required to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q). The Contractor agrees to report each violation to the Village of Wellington and understands and agrees that the Village of Wellington will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

16.12 THE FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Village of Wellington and understands and agrees that the Village of Wellington will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

16.13 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the Village. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Village, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16.14 BYRD ANTI-LOBBYING AMENDMENT (U.S.C. 1352)

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. Required Certification. If applicable, contractors must sign and submit to the non-federal entity certification set for in **Exhibit "B"**.

16.15 RESERVED

16.16 PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA - designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

16.17 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.

16.18 Compliance with Federal Law, Regulations, and Executive Orders

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

16.19 No Obligation by Federal Government

The Federal Government is not a party to this contract is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

16.20 Program Fraud and False or Fraudulent Statements or Related Acts

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

ARTICLE 17. MISCELLANEOUS PROVISIONS

17.1 **Scrutinized Companies.** If Contractor is a corporate entity, Contractor certifies pursuant to sections 215.4725 and 287.135 of the Florida Statutes, that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, are not on the Scrutinized Companies that Boycott Israel List and are not participating in a boycott of Israel. If this Agreement is valued greater than \$1 million, Contractor further certifies pursuant to sections 215.473 and 287.135, Florida Statutes, that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, (a) have not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and (b) do not have business operations in Cuba or Syria. Submitting a false certification shall be deemed a material breach of this Agreement. If Wellington determines, using credible information available to the public, that Contractor has submitted a false certification, Wellington may terminate this Agreement and pursue the remedies set forth in section 287.135, Florida Statutes, and any other available remedies.

17.2 **Compliance with F.S. 448.095.** Wellington requires all contractors and subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired employees. All contractors performing work for Wellington are required to provide proof of registration with the E-Verify System and must provide an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

17.3 Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested to the following addresses:

As to Wellington: The Village of Wellington
12300 Forest Hill Boulevard
Wellington, FL 33414
Attn: Jim Barnes

As to the Contractor: Name: _____
Address: _____
Attn: _____

17.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof.

17.5. Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

17.6. Assignability. This Agreement may not be assigned without the prior written consent of all parties to this Agreement.

17.7. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

17.8. Governing Law and Venue. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.

17.9 Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning of interpretation of this Agreement.

17.10 Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

17.11 Construction. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement, and accordingly, no Court or Administrative Hearing Officer construing this Agreement shall construe it more strictly against one party than the other, and every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning.

17.12 Attorney's Fees. It is hereby understood and agreed that, in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes, the non-prevailing party pay to the prevailing party reasonable attorney's fees and costs, including appellate fees and costs.

17.13 Equal Opportunity. Wellington and the Contractor agree that no person shall, on the grounds of race, color, gender, national origin, ancestry, marital status, disability, religion, creed, or age be

discriminated against in the performance of this Agreement.

17.14 Use of Other Contractors. Wellington reserves the right to use multiple contractors herein and the Contractor agrees to the same.

17.15 Remedies. 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 or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17.16 Continuing Nature. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration, or earlier termination or cancellation.

17.17 Time. Time is of the essence in all respects under this Agreement.

17.18 Waiver. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

17.19 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.20 Disputes. All disputes arising out of the performance of the Agreement shall be subject to litigation in Palm Beach County, Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter written.

OWNER: Village of Wellington CONTRACTOR: _____

By _____
Anne Gerwig, Mayor

By _____

Attest: _____
Chevelle Addie, Wellington Clerk

Attest: _____

(SEAL)

(CORPORATE SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

License No. _____

Agent for service of process:

Laurie Cohen, Attorney for Wellington

(If CONTRACTOR is a corporation, attach evidence of authority to sign.