



**REQUEST FOR PROPOSALS  
DISASTER RECOVERY SERVICES**

**RFP# 012-16/DZ**

12300 Forest Hill Boulevard  
Wellington, FL 33414

PURCHASING DIVISION  
561-791-4107  
FAX 561-904-5817



## **LEGAL NOTICE**

### **REQUEST FOR PROPOSALS (RFP#012-16/DZ)**

The Village of Wellington is accepting sealed proposals from qualified firms or individuals to provide “Disaster Recovery Services” to include but not limited to debris removal, disposal and recovery technical assistance in the event of a disaster.

### **PROPOSAL SUBMISSION**

Proposals, one original, five copies and one electronic copy (CD) will be received by sealed envelope in the Wellington City Hall Clerk’s Office, 12300 Forest Hill Boulevard, Wellington, Florida 33414 on or before **April 25, 2016 at 10:00AM Local Time** at which time they will be opened and read. Proposals received after this time will not be considered and no time extensions will be permitted. Receipt of a response by any Wellington office, receptionist or personnel other than the Clerk’s Office does not constitute “receipt” as required by this solicitation. Please clearly mark proposals:

### **Disaster Recovery Services – RFP#012-16/DZ**

Copies of this Proposal Document may be obtained via Onvia at [www.demandstar.com](http://www.demandstar.com) or by visiting our website, <http://wellingtonfl.gov> or by contacting Danielle Zembrzuski in the Purchasing Department at (561) 791-4107, [dzembrzuski@wellingtonfl.gov](mailto:dzembrzuski@wellingtonfl.gov) beginning on **March 21, 2016**.

### **OPTIONAL PRE-PROPOSAL MEETING:**

An Optional Pre-Proposal Meeting will be held on **March 28, 2016 at 10:00 AM Local Time** at the Wellington City Hall located at 12300 Forest Hill Boulevard, Wellington, Florida 33414.

### **EVALUATION COMMITTEE:**

An Evaluation Committee meeting will be held at a date and time to be determined at the Wellington City Hall building located at 12300 Forest Hill Boulevard, Wellington, FL 33414.

### **FOR INFORMATION**

For information on this Request for Proposal, contact Danielle Zembrzuski in the Purchasing Division, (561) 791-4107.

### **ACCEPTANCE AND REJECTIONS**

When it is in its best interest, the Village of Wellington reserves the right to reject any or all proposals with or without cause; to cancel the RFP and re-solicit the services; to waive any or all irregularities with regard to the specifications; and to make the award to the firm offering the greatest advantage to the Village of Wellington.

## **DISASTER RECOVERY SERVICES**

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## DISASTER RECOVERY SERVICES

### TIMELINE

1. **TIMELINE:** The Event Timeline below gives the date and time (where applicable) for major activities in the solicitation.

EVENT	TIME	DUE DATE	LOCATION
Request for proposals (RFP) Advertised	N/A	March 20, 2016	Palm Beach Post; Demandstar.com;
Pre-Proposal Meeting (Optional)	10:00AM Local Time	March 28, 2016	12300 Forest Hill Blvd. Wellington, FL 33414
Number of Proposal Copies Including Original	1 original & 5 copies and 1 electronic (pdf) copy (CD)	N/A	Delivered to Wellington Clerk's Office
Questions from Proposers to Warrant Response/Addendum	06:00 p.m. local time	April 15, 2016	www.demandstar.com and www.wellingtonfl.gov for final Response/Addendum
Bids Received By – (Deadline & Opening)	10:00 a.m. Local Time	April 25, 2016	Wellington Clerk's Office 12300 Forest Hill Blvd, Wellington, FL 33414
Evaluation Committee Meeting	TBD	TBD	Wellington City Hall 12300 Forest Hill Blvd, Wellington, FL 33414
Posted Notice of Intended Award	Tentative	TBD	Clerk's Office & Demandstar.com & Wellington Website
Contract Award by Village Council	Tentative	TBD	N/A

\* Dates above are subject to change based on the number of respondents, availability of the members, or other unforeseen circumstances.

## **GENERAL TERMS AND CONDITIONS**

### **1. GENERAL INFORMATION**

Notice is hereby given that Request for Proposal submittal packages will be received until April 25, 2016 at 10:00 AM Local Time. Mail or deliver all proposals to Clerk's Office, 12300 Forest Hill Blvd., Wellington, Florida 33414. All submittals must be clearly marked on the outside **Disaster Recovery Services - RFP #012-16/DZ**. Any proposer desiring to provide the required services should submit ONE (1) ORIGINAL SIGNED IN INK, FIVE (5) COPIES and ONE (1) ELECTRONIC PDF COPY (CD) of the RFP Submittal Package including all Requests for Proposal documents as required by RFP #012-16/DZ. Proposals must be completely filled in, signed, sealed, and returned to the Clerk's office on or before the specified time and date.

It is the sole responsibility of the Proposer to ensure that his or her Proposal reaches the Clerk's Office on or before the closing date and time. Wellington shall in no way be responsible for delays caused by any other occurrence. Offers by telephone, e-mail or facsimile shall not be accepted.

Proposers shall not be allowed to modify their Proposals after the opening time and date.

For information concerning this proposal, please contact:

**Danielle Zembrzusi– Purchasing Department**  
**Phone: 561-791-4107**  
**Fax: 561-904-5817**  
**[dzembrzusi@wellingtonfl.gov](mailto:dzembrzusi@wellingtonfl.gov)**

### **2. TERM OF CONTRACT**

The term of the contract shall be for three (3) year from the date of award, and by mutual agreement Wellington and the awardee(s), be renewable for two (2) additional one (1) year periods. Wellington reserves the right to exercise the option to renew annually (subject to the appropriate funds), not to exceed a maximum of 2 (two) years.

Annual renewals will be based upon mutual agreement between Wellington and the vendor, and by incorporating the same terms and conditions. Renewals will be by written notice from Wellington, and acceptance by the awarded vendor(s). The written notice will be generally provided about 90 days prior to the expiration date of the contract. The pricing submitted for the initial period of the contract will remain fixed. There will be no allowable price escalations for services, materials or fuel costs throughout the initial term of the contract.

Upon the anniversary date of each renewal period, the awarded vendor may submit a requested price increase per individual unit cost to the Purchasing Division in writing, ninety days prior to the renewal period. Wellington will consider such price increase based on the most recent Consumer Price Index and/or proof of a manufacturer's price increase. If the most recent CPI or market reflects a de-escalation of prices, the awardee(s) will extend such prices.

Wellington reserves the right to accept or reject any price increase and may choose to re-bid the contract if it is deemed to be in the best interest of Wellington. Wellington reserves the right to extend automatically any contract for a period of 90 calendar days in order to provide Wellington with continual services while a new contract is solicited and/or evaluated.

In the case where a specific project has begun, and the contract period has expired, the contracted firm shall continue with the project until project closeout and all final records are made available to Wellington and FEMA.

The awarded proposer shall be in default of any conditional award if any of the required documents are not submitted in a timely manner and in the form required by Wellington. If the proposer is in default, Wellington, through its designated Purchasing Agent, will void its acceptance of the proposer's offer and may determine to select the next most responsive, responsible proposer or re-solicit RFPs. Wellington, at its sole option, may seek monetary restitution from the defaulting

proposer because of damages or excess costs sustained and/or may prohibit the proposer from submitting future bids/proposals for a period of one year.

Wellington shall not be responsible for any costs incurred by the proposer in preparation of a proposal and/or the pursuit of an award or the costs incurred by a proposer in protest of a Notice of Intent to Award a contract or Award of Contract made by Wellington.

### **3. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA):**

The successful proposer warrants that the services provided to Wellington shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be considered as a breach of contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely by the successful proposer responsible for same.

### **4. LIABILITY, INSURANCE, LICENSES, PERMITS:**

Where the successful proposer is required to enter or go onto Wellington property to deliver goods, materials, or perform work or services as a result of an RFP award, the successful proposer will assume the full duty, obligation, and expense of obtaining all necessary licenses, permits, and insurance and assure all work complies with all Federal, State, Local, Palm Beach County and Wellington ordinances, orders, codes, laws, rules, regulations, directives, and guidelines. The successful proposer shall be liable for any damages or loss to Wellington occasioned by negligence of the successful proposer (or agent) or any person the successful proposer has designated in the completion of the contract as a result of the proposal of this RFP.

### **5. CERTIFICATE OF INSURANCE:**

The successful proposer(s) will submit to the Village current certificate(s) of insurance in the amount specified in Section 11 of the RFP.

### **6. DEFAULT/FAILURE TO PERFORM:**

Wellington shall be the sole judge of nonperformance, which shall include any failure on the part of the successful proposer to accept the award, to furnish required documents, and/or to fulfill any portion of the contract within the time stipulated.

Upon default by the successful Proposer to meet any terms of this Request for Proposal submittal, related agreement, and work authorization(s) Wellington will notify the successful proposer (3) days (Fridays, Saturdays, Sundays and Holidays excluded) to remedy the default. Failure on the successful proposer's part to correct the default within the required three (3) days shall result in the contract being terminated and upon Wellington notifying in writing the successful proposer of its intentions and the effective date of the termination. The following shall constitute default:

- Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities, and personnel as identified and set forth, and to the degree specified in the contract.
- Failure to begin the work under this contract within the time specified.
- Failure to perform the work with sufficient workers and equipment, or with sufficient materials to ensure timely completion.
- Neglecting or refusing to remove materials or perform new work where prior work has been rejected as nonconforming with the terms of the contract.

- Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful proposer incapable of performing the work in accordance with and as required by the contract.
- Failure to comply with any of the terms of the contract in any material respect.
- Failure to pay subcontractors or others pursuant to work done under this contract.

In the event of default of a contract, the successful proposer shall pay the entire Wellington's attorney's fees and court costs incurred in collecting any damages. The successful proposer shall pay Wellington for any and all costs incurred in ensuring the completion of the project, subject however to the terms and conditions herein. To the extent of a conflict with this provision and the contract the successful proposer enters into the terms and conditions of the contract shall control.

## **7. CANCELLATION:**

Wellington reserves the right to cancel the contract by written notice to the successful proposer effective the date specified in the notice, and the following will apply:

- The successful proposer is determined by Wellington to be in breach of any of the terms and conditions of the contract and/or to have failed to perform his/her services in a manner satisfactory to Wellington. In the event the successful proposer is found to be in default, the successful proposer will be paid for all labor and materials provided to the satisfaction of Wellington as of the termination date. No consideration will be given for anticipated loss of revenue or the canceled portions of the contract. The successful proposer waives any claims to the same.
- Wellington has determined that such cancellation will be in the best interest of Wellington to cancel the contract for its own convenience.
- Funds are not available to cover the cost of the services. Wellington's obligation is contingent upon the availability of appropriate funds.

## **8. BILLING INSTRUCTIONS-AWARDED FIRM:**

Invoices, unless otherwise indicated by Wellington's Finance Department must show purchase order numbers and shall be submitted to Accounts Payable, 12300 Forest Hill Boulevard, Wellington, FL 33414. Payment shall be made in accordance with the Florida Prompt Payment Act, as amended from time to time. All invoices for fees or other compensation shall be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

## **9. APPLICABLE LAW AND VENUE:**

The law of the State of Florida shall govern the contract between Wellington and the successful proposer, and any action shall be brought in Palm Beach County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney's fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

## **10. LEGAL REQUIREMENTS:**

Federal, State, County, local and Wellington laws, ordinances, orders, rules, regulations, guidelines, and directives that in any manner affect the items covered herein apply. Lack of knowledge by the successful proposer will in no way be a cause for relief from responsibility.

## **11. INSURANCE:**

Once a contract is awarded, the Contractor will deliver to Insurance Tracking Services, Inc. (ITS), Village of Wellington authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Contractor. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Certificate Holder Address:

(Certificates need to include the following as the Certificate Holder)

Village of Wellington

c/o Insurance Tracking Services, Inc. (ITS)

P.O. Box 20270

Long Beach, CA 90801

Email: [VOW@instracking.com](mailto:VOW@instracking.com) or

Facsimile: +1 (562) 435-2999

### **Cancellation and/or Modification of Insurance Coverage**

Each insurance policy supplied by the Contractor must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases, has been given to Village of Wellington and such notice is by postal mail, return receipt requested. This notice requirement does not waive the insurance requirements contained herein.

### **Renewal Policies**

The Contractor shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than five (5) business days before to the expiration date of any policy.

During the term of the contract, the successful proposer shall procure and maintain liability and Malpractice coverage and provide a copy of the declarations page from current policies for each of the following types and amounts of insurance:

- a) a) Comprehensive General Liability insurance on an occurrence basis in an amount not less than \$1,000,000 combined single limit Bodily Injury Liability and Property Damage Liability.
- b) b) Worker's Compensation Insurance applicable to its employees, if any, for statutory coverage limits in compliance with Florida laws, including Employers' Liability which meets all state and federal laws.
- c) c) Professional Liability/Malpractice/Errors or Omissions Insurance, as appropriate for the type of business engaged in by the Vendor, shall be purchased and maintained by the Vendor with minimum limits of \$1,000,000 per occurrence.
- d) d) Products Liability Insurance as appropriate for the type of product sold or dispensed by Vendor in an amount of not less than \$1,000,000.
- e) e) Hired and Non-Hired Vehicles with limits of not less than One Million Dollars (\$1,000,000) per claim.

The firm must agree to the terms and conditions in the standard Consultant Agreement and if awarded the contract will agree to provide evidence of required limits on a Certificate of Insurance.



## **12. RECORDS AND AUDITS:**

Successful proposer shall maintain, during the term of the contract, all books of account, receipt invoices, reports, and records in accordance with generally accepted accounting practices and standards (GAAP). The successful proposer shall maintain and make available such records and files for the duration of the contract and retain them beyond the last day of the contract term for the period of three (3) years.

## **13. DUTY TO UPDATE RECORDS:**

It shall be the responsibility of any individual or firm contracted by Wellington for any Type(s) of Work to notify Wellington promptly of any substantive amendment to the information provided in this Request for Proposal package submittal, as well as to update that information on an annual basis.

## **14. DISPUTES:**

A prospective bidder, proposer or offeror may submit a protest in writing to the Purchasing Manager challenging the terms, conditions, or specifications of a competitive solicitation, including any provision governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract. The foregoing notwithstanding, a protest may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefore contained in the competitive solicitation. The protest must be filed within three (3) days (excluding Fridays, Saturdays, Sundays and legal holidays) after the public posting or advertising of the competitive solicitation. Failure to file a protest as to the terms, conditions, or specifications of a competitive solicitation shall be deemed a waiver of the right to protest on those grounds. Prior to the award of any contract, bidders, proposer(s) or offeror(s), may submit a protest in writing to the Purchasing Manager. The protest must be filed within (3) days (excluding Fridays, Saturdays, Sundays and legal holidays) after the posting of the Notice of Intended Award for public viewing at Wellington's Clerk's Office. All bidders, proposers, offerors or contractors affected by the intended award of contract will also be notified by the Purchasing Manager, via Demandstar.com or other means, of the intended award posting. Notwithstanding the above, it is the responsibility of all bidders, proposers, offerors or contractors affected by the proposed award to review the public posting of the intended award, and the deadlines to protest set forth herein shall not be enlarged based upon a claim of lack of knowledge thereof. Additionally, in order to maintain a protest, a protestor must have standing pursuant to established Florida case law. Protests filed by a person or entity that does not have standing may be summarily denied without further action or decision.

In order to defray a portion of the administrative costs associated with a protest, all protests shall be accompanied by a filing fee in the form of a cashier's check or money order for an amount equal to one percent (1%) of the total estimated contract value, but not less than \$1,000 nor more than \$10,000. Failure to pay the filing fee shall result in a denial of the protest. In the event that a protest is upheld, the filing fee shall be refunded to the protestor. For specific procedures on how to file a formal protest, refer to Chapter 9, Village of Wellington Purchasing Manual.

## **15. LEGAL REQUIREMENTS:**

Federal, State, County and Wellington laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Proposer will in no way be a cause for relief from responsibility.

## **16. PUBLIC ENTITY CRIMES:**

As provided in Section 287.133(2) (a), Florida Statutes, 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 a public entity, may not submit a Bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business

with any public entity in excess of the threshold amount provided S.S. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

#### **17. CONFLICT OF INTEREST AND CODE OF ETHICS:**

The award is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of Wellington, the Palm Beach County Code of Ethics, Ch. 112, Part III, Florida Statutes and the applicable portions of Chapter 2 of the Code of Federal Regulations (“CFR”), Part 200. All Bidders must complete the Conflict of Interest Statement attached. The Bidder’s duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of Wellington. Notwithstanding the foregoing, pursuant to §200.318(c)(1) of Chapter 2 of the CFR, all Bidders acknowledge and understand that no employee, officer, or agent of the Village of Wellington has or will participate in the selection, award, or administration of a contract supported by a Federal award if he or she 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 a contract.

#### **18. COMPETITION**

All procurement transactions must be 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. Additionally, pursuant to §200.321 of Chapter 2 of the CFR, Wellington is required to take all necessary affirmative steps in assuring that all qualifying minority businesses, women’s business enterprises and labor surplus area firms are placed on solicitation lists.

#### **19. FLORIDA PUBLIC RECORDS ACT:**

All material submitted regarding this proposal becomes the property of Wellington. Proposals may be reviewed by any person thirty (30) days after the public opening or after Notice of Intent to Award has been issued whichever occurs first. Proposers should take special note of this as it relates to any proprietary information that might be included in their offer. Any resulting contract may be reviewed by any person after the contract has been executed by Wellington. Wellington has the right to use any or all information/material submitted in response to this bid and/or any resulting contract from same. Disqualification of a bidder does not eliminate this right.

#### **20. TIED PROPOSALS:**

If two or more bidders or proposers are tied, the following criteria will be used to break the tie:

- a. Delivery time – time for performance, if provided in the bid or proposal.
- b. Certification of a “Drug-Free Workplace Program” which meets the criteria established in F.S., Section 287.087.

If application of the above criteria does not resolve the tie, the award will be given to the bidder or proposer whose bid was received earliest by Wellington, and as indicated by the time clock stamp impressed upon the bid or proposal.

#### **21. INDEMNIFICATION:**

Regardless of the coverage provided by any insurance, the successful bidder/proposer shall indemnify, save harmless and defend Wellington, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful bidder/proposer, its subcontractors, agents, servants or employees during the course of performing services or caused by the goods provided pursuant to these bid documents and/or resultant contract.

## **22. LOBBYING/CONE OF SILENCE:**

Consistent with the requirements of Chapter 2, Article VIII, Lobbyist Registration, of the Palm Beach County Code of Ordinances, Wellington imposes a Cone of Silence. A cone of silence shall be imposed upon each competitive solicitation from the time of advertisement and shall remain in effect until Council awards or approves a contract, rejects all bids or responses, or otherwise takes action that ends the solicitation process. While the cone of silence is in effect, no proposer or its agent shall directly or indirectly communicate with any member of Council or their staff, the Manager, any employee of Wellington authorized to act on behalf of Wellington in relation to the award of a particular contract, or member of the Selection Committee in reference to the solicitation, with the exception of the Purchasing Agent or designee (Chapter 9, Village of Wellington Purchasing Manual and Section 2-355 of the Palm Beach County Code of Ordinances. Failure to abide by this provision may serve as grounds for disqualification for award of contract to the proposer. Further, any contract entered into in violation of the cone of silence shall render the transaction voidable.

The cone of silence shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before Selection Committees, contract negotiations during any public meeting, presentations made to the Council, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence with Wellington as may be permitted by the competitive solicitation. Additionally, the cone of silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in this Manual.

Additionally, 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.

## **23. BOND REQUIREMENTS**

Pursuant to §200.325 of Chapter 2 of the CFR, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- a. a bid guarantee from each bidder equivalent to five percent of the bid price is required and the “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified;
- b. a performance bond on the part of the contractor for 100 percent of the contract price; and
- c. a payment bond on the part of the contractor for 100 percent of the contract price.

Notwithstanding the foregoing, the contractor awarded the services under the RFP acknowledges that in the event of a natural disaster the monetary value of performing the services under the RFP may increase depending on the amount of accumulated debris. Consequently, said contractor will at all times be responsible for increasing the performance and payment bonds to mirror the corresponding increase in the monetary value of services. In no event shall the value of performing the services under this RFP ever exceed the value of the bonds.

## **24. INQUIRIES/REQUEST FOR CLARIFICATION:**

All questions about the meaning or intent of the RFP Documents must be directed, in writing, to Danielle Zembrzski, Wellington Purchasing Department, as provided in the advertisement/Request for Proposal. Questions received after April 15, 2016 at 6:00 PM Local Time may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. All inquiries, addendums and request for clarifications will be posted on the Village of Wellington's website and [www.demandstar.com](http://www.demandstar.com). Demandstar will automatically notify all plan holders of any inquiries, addendums and request for clarifications once posted by Wellington.

## **25. LOCAL PREFERENCE PROHIBITION:**

Pursuant to §200.319(b) of Chapter 2 of the CFR, all Bidders acknowledge that the Village of Wellington 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. Consequently, the Evaluation Committee is prohibited from taking into consideration when making their recommendation the proposer's business location and award additional points to local businesses in accordance with the Wellington's Local Preference Policy found in Chapter 9 of Wellington's Purchasing and Procurement Manual, as amended from time to time. This Preference includes: (A) Western Communities local business with permanent location and headquarters zoned within the boundaries west of the Florida Turnpike, north of Lantana Road, south of Okeechobee Boulevard and U.S. Highway 98, east of Palm Beach County western boundary; (B) Palm Beach County local business with principal permanent location and corporate headquarters within Palm Beach County, Florida.

## **26. PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL:**

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

## **27. COMPLIANCE WITH SECTION 2 OF THE CODE OF FEDERAL REGULATIONS, PART 200**

All Bidders acknowledge that this award is subject to any and all applicable provisions of the Chapter 2 of the Code of Federal Regulations, Part 200, otherwise referred to as the "Super Circular". The Village of Wellington has used its best efforts to comply with the Super Circular in the administration of this award and all Bidders hereto by submitting a bid acknowledge and agree to the Village of Wellington's compliance therewith.

## **28. EVALUATION OF WRITTEN PROPOSALS:**

Following the opening of the proposal packages, the proposals will be evaluated by an Evaluation/Selection Committee. Scoring proposals are based on a point total and not a percentage.

Awards shall be made to firms who are the most responsive and responsible and whose proposals are determined to be the most advantageous to Wellington. Proposals will be evaluated based on the criteria listed below.

<b>Criteria</b>	<b>Points</b>
1. Qualifications and Experience of the Firm	30
2. Technical Approach and Methodology	30
3. Price Proposal	30

4. Financial Stability and Bonding Capacity	10
<b>Total</b>	<b>100</b>

Each Selection Committee member will convert the Maximum Available Point score (cardinal number) for each proposer into an ordinal number designating the ranking (as first, second, or third of each proposer). For example:

Cardinal Number	Ordinal Number
100	1
95	2
92	3
91	4
86	5

The ordinal scores from each Selection Committee member for each proposer, will be added together to calculate a total ordinal score. The proposer with the lowest total ordinal score will be ranked highest for award preference. The proposer with the second lowest total ordinal score will be ranked second highest for award preference, and so on, until all proposers are ranked.

The Selection Committee shall rank and recommend in order of preference firms deemed to be the most responsible and responsive and whose proposals are the most advantageous to Wellington after consideration of the written proposal criteria described above.

## **29. EVALUATION CRITERIA:**

The evaluation criteria define the factors that will be used by the selection committee to evaluate and score responsible, responsive and qualified proposals. Prospective contractors shall include sufficient information to allow the selection committee to thoroughly evaluate and score their proposals. Each proposal submitted shall be evaluated and ranked by a selection committee. The contract will be awarded to the most qualified contractor whose proposal has been determined to be the most advantageous to Wellington per the evaluation criteria listed below.

### **A. QUALIFICATIONS AND EXPERIENCE (MAX 30 POINTS – MAX 10 pages 8’x11’ front and back )**

Proposer shall provide information on its historical background and experience on emergency recovery projects. Proposer shall also provide information that documents its ability to successfully and reliably perform the types of services required in this RFP. At a minimum, the Proposer shall document or provide the following:

- Proposer’s background, including the number of years the company has been in existence; the number of years the company has been involved with disaster recovery and debris removal; principals of the company; entity’s participating in the disaster recovery team; and the company’s history and experience working with the proposed joint venture or major subcontractor(s) on disaster recovery and debris removal. Please provide a description of your organization’s related experience and capabilities. Each Proposer must also provide a list of similar project to those specified in the scope of work and provide references for the projects where. Each reference must include jurisdiction name, contact name, email address and phone number and description of project.
- List the name, title or position, and project duties of those persons who will have a management or senior position working with the Wellington if awarded this contract. For each individual, include a resume or summary of qualifications and experience that demonstrates the person’s knowledge and understanding of the types of services to be performed and of federal, state and local laws and

regulations governing this type of work, as well as the person's familiarity with representatives of FEMA, FHWA or other federal, state or local agencies.

- Proposer's ability to establish and operate multiple Debris Management Sites (DMS) where collected debris may be sorted, screened for sand, recycled, ground, mulched, burned or otherwise segregated for transport and disposal. The Proposer's knowledge of regulations affecting the removal, processing and disposal of mixed debris should be demonstrated.
- Detailed description of the Proposer's experience and success in filing and receiving federal (FEMA, FHWA, etc.) and state reimbursements for disaster recovery work. This discussion should include the Proposer's experience in preparing and submitting federal/state project work sheets.
- Proposer's expertise and experience in assessing, removing and disposing of specialty debris including hazardous materials, dead animals and hazardous stumps.
- Proposer's expertise and experience in demolition of structures, and debris removal from private property (right-of-entry programs) and publicly owned property (other than rights-of-way).
- Proposer's expertise and experience in assisting governmental entities in providing community relations including the company's ability to create audio/visual presentations and fact sheets.
- Proposer's expertise and experience in assisting governmental entities in providing human support activities such as food, water and sanitation services,
- Demonstration that the Proposer, or the principals assigned to the project, has successfully completed services similar or equivalent to those specified in the scope of services.
- List of all government agencies in Florida for which the Proposer has provided emergency debris recovery services. Proposer should note whether it was part of a joint venture and, if so, whether it was the primary or secondary contractor. Proposer should provide the following information for each agency: government agency name, current address and phone number; project/event title; contact person and telephone number; contract team; performance period; fees charged for services provided in each year; and brief description of the work completed.
- List of all pending lawsuits involving the corporation, partnership or individuals with more than ten percent (10%) interest that are related to the services to be provided under this RFP.
- List of all judgments from lawsuits in the last five (5) years involving the corporation, partnership or individuals with more than ten percent (10%) interest that are related to the services to be provided under this RFP.
- Proposer shall provide a maximum of four (4) references for similar work including name, address, telephone number and e-mail address for each (form attached). Wellington will only contact the four references provided on the attached form. Any additional references provided by the proposer will not be contacted.

**B. TECHNICAL APPROACH AND METHODOLOGY (30 MAX POINTS - MAX 10 pages 8'x11' front and back)**

At a minimum, the Proposer shall provide the following:

- Proposer's thorough understanding of the elements affecting removal and processing of Vegetative Debris and Mixed Debris following a disaster event.
- Mobilization/operation plan that outlines the Proposer's mobilization/operation procedures following a disaster event. Any supplemental plans or operating procedures referenced in the proposal must be submitted with the proposal as attachments. This outline should include a breakdown of the time required to perform each task including guaranteed times to mobilize the Proposer's forces, to establish an onsite emergency response and communication center, to mobilize recovery equipment, to establish Debris Management Sites (DMS), and to mobilize subcontractors.

The mobilization/operation plan should include a breakdown of the manpower (position titles and number of support personnel) and equipment (type of loaders, aerial lifts and transport vehicles etc.) that will be assembled during each phase (Initial Deployment, Emergency Push/Road Clearance, Debris Removal, Debris Management Sites (DMS) Operations including provisions for recycling debris, Demolition of Structures and Optional Services etc.) of the Proposer's response.

- Description of the Proposer's "clean as you go" policy.
- Operation plan for Debris Management Sites (DMS) that describes the operations expected including materials handling, reduction, storage, recycling, equipment maintenance, etc.
- Describe the subcontractor plan that provides a clear description of the scope and percentage of work the Contractor may subcontract out and limiting use of subcontractors to only those approved by Wellington.
- Proposer's organizational structure and "chain of command" of the Proposer's response team. The Proposer's project management methods should be explained, including protocols for team work assignments, data management, project tracking, and any other appropriate management considerations. This discussion should demonstrate the Proposer's ability to supervise multiple clean-up crews, to manage multiple tasks simultaneously and expeditiously, and to resolve problems. It should also explain the Proposer's approach to ensuring the quality of the work being performed by its crews and subcontractors.
- Proposers shall specify the format of the electronic record keeping system to be employed in order to provide the required reports to Wellington. An example of a report format shall be attached and a narrative of the reporting process including time frames for the availability of the reports shall be given. Provide a copy of any forms utilized in the performance of work including but not limited to the load tickets and vehicle placards to be provided to Wellington for use in the operation of a debris management activity.
- Description of the onsite emergency response and communication center including the type of communication employed by the Proposer and the Proposer's ability to interface with Wellington's emergency response equipment.
- Comprehensive description of the proposed quality control plan. This description should include, at a minimum, the Proposer's quality control organization, overview of tasks to be inspected, reports, and methods of inspections.
- Description of the Proposer's customer service plan to respond to complaints.
- Provide a detailed list of any other services the Proposer is able to provide and how these services will be accomplished.
- Describe the Proposer's Hazardous Waste (HW), Household Hazardous Waste (HHW), Infectious Waste and Chemical, Biological, Radiological, and Nuclear (CBRN) Cleanup and Disposal Plan.
- Estimate of the Proposer's current workload and future commitments to other emergency response contracts both in man-hours per year and as a percentage of total workload for all key project personnel.
- List of all current contractual obligations within Florida for similar disaster recovery services. The Proposer should explain its plan for managing multiple debris management contracts in the event of a regional or statewide emergency, and the company's ability to respond to Wellington with the full force of manpower and equipment committed in its proposal.
- Proposer's equipment and resource list – Proposers shall submit a list of on-site and off-site equipment that will be available at the collection site or facility. The list should include all fire prevention, safety, personal protective equipment, and other equipment that the Proposer determines suitable or necessary for the project.

- Spill and Fire Prevention Plan – Proposers shall submit spill prevention and fire prevention plans tailored to on-site activities at the Debris Management Sites (DMS) or facility.
- Contingency Plan – Proposers shall submit a format for a contingency plan and provide a description of notification procedures to the participants of on-site emergencies and evacuation of the participants in case of an emergency on-site.
- Employee Training and Medical Monitoring– Proposers shall submit a detailed training outline of each position involved in debris removal and Debris Management Sites (DMS) operations. Proposers shall also submit information regarding employee medical monitoring requirements.
- Description of Proposer’s Safety Record – Proposers shall submit a listing of all warning notifications, violations and/or citations received from pertinent federal, and/or state agencies in the past three (3) years by the Proposer.
- List of all subcontractors including contact information (name, address, phone number, e-mail address, principal place of business location, etc)

### **C. PRICE PROPOSAL (MAX 30 POINTS)**

Pricing schedule will be evaluated using the estimated quantities as provided in Section A of the schedule of values as described below:

- Right of Way (ROW) clearing
- Management and operations of DMS to accept, process and reduce disaster related debris
- Haul out residual debris to final disposal
- Removal, backfill and disposal of hazardous stumps
- ROW cutting partially uprooted or split trees
- ROW removal of dangerous hanging limbs
- Private Property Debris Removal
- Backfill
- Removal and destruction of animal carcass
- Loading and hauling of white goods
- Removal and disposal of Freon
- Derelict vehicle and vessel removal (from land and water)
- Operation of secure aggregation site for vehicle and vessels
- Demolition of structures
- Concrete removal
- Creosote timber piling removal
- Household hazardous waste

Proposer shall provide additional pricing in Schedule of Values Section B (this pricing will not be included in the Price Schedule evaluation) and as described below:

- Power sources
- Stadium light tower
- Temporary office trailers
- Port o lets
- Additional services and materials
- Personnel equipment and materials hourly pricing

### **D. FINANCIAL STABILITY AND BONDING CAPACITY (MAX 10 POINTS)**

- Proposer shall provide at a minimum one of the following:



- An audited financial statement for the past two years.
- A third party prepared financial statement for the past two years if an audited financial statement is not available. Any such third party certified statement shall be signed and certified by the third party Certified Public Accountant (CPA) and signed and certified as accurate by the proposer.
- Past two years filed tax return with proof of filing
- Proposer shall provide an executed letter of commitment, proof of bonding capacity issued by the Surety Company for the payment and performance bond.

Upon completion of the technical criteria evaluation, the selection committee shall rank and recommend in order of preference firms deemed to be the most responsible and responsive and whose proposals are determined to be the most advantageous to Wellington based upon the criteria set forth above. If Wellington is unable to negotiate a contract with the highest ranked firm, negotiations will begin with the next highest ranked firm and so on until a contract is successfully negotiated.

The selection committee may choose to conduct interview/presentation sessions with short listed firms. In the event that interviews /presentations are required the scores/rankings from the written proposal process shall not be included in the final ranking for award preference. Only the scores from the oral interviews/presentation rankings shall be used. Upon completion of the oral interviews, the selection committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the same criteria used to short list such firms.

Rather than short listing firms, the selection committee reserves the right to by-pass the technical criteria evaluation portion of the RFP and conduct interviews/presentations with all responsive, responsible proposers. Upon completion of the interviews/presentations the selection committee shall score and rank all responsive, responsible proposers to determine which proposal is the most advantageous to Wellington.

### **30. INSTRUCTIONS FOR SUBMITTING:**

Firms shall submit one (1) original and five (5) copies and one (1) PDF electronic copies of the RFP submittal in a sealed envelope plainly marked: **“Attention: Purchasing Office, RFP# 012-16/DZ – Disaster Recovery Services”**. The original submittal shall be organized into tabs listed herein and shall be provided in one three ring binder as described in the submittal organization on page 18 of the RFP. Electronic copy (CD) of the original shall be provided along with the original binder. The original submittal and each CD shall have the firm’s name, RFP number and title and date clearly displayed on the cover/label.

The proposal must name all persons or entities interested in the proposal as principals. In each proposal by an individual or firm, there shall be stated the name and address of every person having an interest in the proposal; and in the case of a corporation, the names and addresses of its officers. Proposals shall be signed by the person or member of the firm making the proposal, and in the case of a corporation, by an authorized officer or agent subscribing the name of the Corporation and his or her own name. The proposal must declare that it is made without collusion with any other person or entity submitting a proposal pursuant to this RFP.

Neither the Village of Wellington nor its representatives shall be liable for any expenses incurred in connection with the preparation, submission or presentation of a response to this RFP.

## **Submittal Organization**

Firm(s) shall prepare their proposals using the following format:

One (1) original and five copies and (1) PDF Electronic Copy (CD)

### **Cover Letter**

### **Table of Contents**

**Tab #1** – Proposal Checklist and Submittal Form

**Tab #2** – Evidence of Insurance Certification

**Tab #3** – Current License(s)/ Certificates of Authorization / Registrations of the firm to perform the applicable services in the State of Florida.

**Tab #4** – Qualifications and Experience including references (form attached) as described in Section 29 (A) of this RFP (**MAX. 10 Pages 8’x11’ front and back**)

**Tab #5** – Technical Approach and Methodology as described in Section 29 (B) of this RFP (**MAX. 10 Pages 8’x11’ front and back**)

**Tab #6** – Price Proposal as described in Section 29 (C) of this RFP

**Tab #7** – Financial Stability/Bonding Capacity Section 29 (D) of this RFP

**Tab #8** – Proposer’s Certification Form

**Tab #9** – Conflict of Interest Statement

**Tab #10** – Questionnaire

**Tab #11** – Drug Free Workplace Form

**Tab #12** – Acknowledgement of Addendums

### 31. SCOPE OF SERVICES:

As it may be tasked by Wellington in writing in accordance with the contracted unit prices, Contractor shall provide all expertise, personnel, processes, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely clearing, removal and disposal of all eligible and if specifically tasked in writing, non-eligible, disaster generated debris.

The term "eligible," as used herein, means qualifying for emergency funding under the standards described in Federal Emergency Management Agency (FEMA) Publication 325 and all applicable State and Federal Disaster Specific Guidance and Policies, and the Policies of the Federal Highway Administration (hereinafter referred to as FHWA). The availability of Additional Services as described herein is also desired. Where not related directly to debris removal operations, said additional services shall be made part of a contract separate from any debris related services contract.

Wellington will direct all actions to secure necessary permissions, waivers and Right of Entry (ROE) Agreements from real property owners and / or Homeowner Associations (HOA) as required for the lawful removal of debris and/or demolition of structures from real properties. All such actions will be consistent with Federal requirements applicable to the emergency event.

Where applicable, the Contractor shall abide and operate under the following federal acts, regulations and requirements for the duration of this contract:

**FHWA-1273** - Required Contract Provisions Federal-Aid Construction Contracts (attached in its entirety - Attachment E);

**Davis-Bacon Act** – Davis-Bacon Act requirements may be waived only by executive order of the President, ref. 40 U.S.C. 276a-5 which states, “In the event of national emergency the president is authorized to suspend the provisions of 276a to 276b-5 this title.”;

**Buy America;**

**Americans with Disability Act (ADA);**

**Convict Labor** Convict labor use is prohibited in 23 U.S.C. 114;

**National Environmental Policy Act (NEPA) of 1969.**

The term, "**Debris**", as used herein, includes all forms of emergency-generated debris, such as:

- **Vegetative Debris** consisting of whole trees, tree stumps, tree branches, tree trunks and other leafy material;
- **Construction and Demolition Debris (C&D)** consisting of damaged components of buildings and structures such as lumber and wood, gypsum wallboard, glass, metal, roofing materials, tile, carpeting and floor coverings, window coverings, pipe, concrete, fully cured asphalt, equipment, furnishings, and fixtures;
- **Hazardous Waste (HW)** consisting of materials regulated under the Resource Conservation and Recovery Act (RCRA) and that appear on one of the four hazardous waste lists or exhibits at least one of the following four characteristics – ignitability, corrosivity, reactivity or toxicity;
- **Household Hazardous Waste (HHW)** - Used or leftover contents of consumer products that contain chemicals defined in regulatory terms under the Resource Conservation and Recovery Act as appearing on one of the four hazardous waste lists or exhibiting one of the following characteristics: ignitability,

corrosivity, reactivity, or toxicity. Examples of household hazardous waste include small quantities of normal household cleaning and maintenance products, latex and oil based paint, cleaning solvents, gasoline, oils, swimming pool chemicals, pesticides, and propane gas cylinders.

- **White Goods** consisting of discarded household appliances, such as refrigerators, freezers, air conditioners, heat pumps, ovens, washing machines, clothes dryers, and water heaters;
- **Vehicle and Vessels** consisting of motor vehicles and boats;
- **Putrescent Debris** consisting of debris that will decompose or rot, such as animal carcasses and other fleshy organic matter;
- **Soil, Mud, and Sand** resulting from floods, landslides, and storm surges often deposit soil, mud, and sand on improved public property and public rights-of-way. Facilities commonly impacted by this type of debris may include streets, sidewalks, storm and sanitary sewers, water treatment facilities, drainage canals and basins, parks, and swimming pools.
- **Infectious Waste** consisting of waste capable of causing infections in humans, including contaminated animal waste, human blood products, isolation waste, pathological waste and discarded sharps (discarded needles, scalpels, or broken medical instruments);
- **Chemical, Biological, Radiological, and Nuclear (CBRN)** debris consisting of debris contaminated by chemical, biological, radiological, or nuclear materials as a result of a natural or man-made disaster, such as a Weapon of Mass Destruction (WMD) event;

Unless specifically directed by the Wellington in Writing, Contracted services will be limited to eligible activities that are determined by Wellington to be necessary to:

- Eliminate immediate threats to life, public health, and safety;
- Eliminate immediate threats of significant damage to improved public or private property; and
- Ensure the economic recovery of the affected community for the benefit of the community at large.

Contract services will only be performed when requested by Wellington in writing through an approved Work Authorization issued by Wellington. Contractor shall generally only perform its services within the legal boundaries of Wellington. All services shall be in accordance with the unit cost mode of operation specified by Wellington in Work Authorizations.

Wellington reserves the right to assign work to various contractors, at its sole discretion. Wellington also reserves the right to approve all subcontractors hired by the contractor and/or to require the contractor to dismiss a subcontractor for cause, upon request.

### **Initial Deployment**

Within 24 hours of Wellington's Declaration of a State of Emergency, and/or notification to Contractor, the Project Manager shall report to the EOC, or such other place as designated by Wellington. At the direction of Wellington in writing, for the unit price quoted, the Contractor will provide such equipment and equipment operators as deemed necessary for use in Wellington's Rescue and Reconnaissance operation. Separate records shall be kept for FEMA and FHWA roadways for the initial deployment operations.

### **Debris Removal/Demolition of Structures**

**In anticipation of a likely debris generating event, or upon assessment of the magnitude of the debris generated and the type of infrastructure damage caused by the disaster event, Wellington will formulate written direction for the Contractor in the form of one or more Work Authorizations. Work will be authorized to be performed in accordance with the contracted unit costs which**

**generally consist of either the separated components of the entire debris management process or various groupings of these tasks.**

**Debris removal will generally only be authorized if it is eligible for reimbursement by FEMA or FHWA; however, Wellington reserves the right to task the Contractor with performing non eligible work; the cost of which will be born separately by Wellington. All eligible work will be performed consistent with Federal requirements applicable to the disaster event. Separate records shall be kept for removal of eligible and non eligible debris and these operations will generally be kept separate.**

The contractor will ensure compliance with instructions from Wellington regarding the collection, hauling and disposal of HW and HHW, Infectious Waste, CBRN Waste and/or other categories of debris. Separate records shall be kept for removal of these materials from FEMA and FHWA roadways.

Contractor will ensure HW and HHW, Infectious Waste and CBRN Waste screening and disconnection of utilities as appropriate. For Construction and Demolition Debris (C&D), all applicable local, state and federal regulatory requirements regarding asbestos containing materials shall be adhered to unless waived by applicable regulatory authorities.

If requested by Wellington, white goods containing refrigerants will be hauled to a Wellington approved staging area where certified technicians will remove the refrigerants. The removal, transportation and disposal of Freon includes obtaining all necessary Local, State, and Federal Handling Permits and operating in accordance with all Local, State, and Federal regulatory agencies.

Contractor will at all times exercise due diligence in removing debris and performing other work, so as not to damage existing infrastructure.

As directed by Wellington in writing, for the unit price quoted, Contractor shall load and haul any and all types of debris to one or more approved and certified Debris Management Sites (DMS) or other disposal destination designated by Wellington which may or may not be the final disposal site provided by the Contractor.

Typical Debris removal situations are as follows:

**Debris Removal from Public Right-of-Way (ROW)**

Work is generally eligible for reimbursement.

**Debris Removal from Improved and Unimproved Public Property**

Removal from Improved Public Property is generally eligible for reimbursement. Removal from Un-improved Public Property is generally not eligible for reimbursement.

**Debris Removal from Real Property**

Much of this work will be eligible once Wellington secures Right of Entry Agreements (ROE) from property owners.

**Demolition of Structures on Public and Real Property**

Work may be eligible for reimbursement. Right of Entry Agreements (ROE) are required for work on Real Property. As directed by Wellington in writing, Contractor shall demolish unsafe structures located on public and private property in accordance with contracted unit costs. The debris created by demolition activities shall be removed at the unit cost for construction and demolition debris.

### **Debris Separation/Reduction/Recycling and Management of Debris Management Sites (DMS):**

Wellington may provide the Contractor with Debris Management Sites (DMS) that would be used for materials handling, reduction, storage, recycling, equipment maintenance, etc., if it is disadvantageous to transport debris directly to the final disposal location. Wellington may task the Contractor with locating additional sites to be used as (DMS). The Contractor will be responsible for returning any utilized (DMS) to its original condition, abiding by all State and Federal environmental regulatory requirements.

If a (DMS) is activated, the Contractor shall operate and manage it to accept and process all debris authorized by Wellington's contract administrator. Actions listed below will be implemented by the Contractor only with the prior approval of Wellington. Actions by the Contractor will include, but are not limited to, the following:

- Ensure that only debris authorized by Wellington's Contract Administrator will be allowed into the (DMS).
- Provide to Wellington a video record of the pre- and post-use site conditions.
- As directed by Wellington, conduct an onsite Phase 1 Environmental Audit.
- Prepare a plan of proposed site layout and review with Wellington prior to its implementation.
- Prepare a plan for site security and traffic control for both on the site and adjacent roadways and review with Wellington prior to its implementation.
- Provide adequate fire prevention/fighting equipment, including water truck and hoses, on site throughout the operational period of the (DMS).
- Build and/or maintain roads as necessary for (DMS) operation
- Provide and/or construct and maintain stabilized roofed inspection towers sufficient for a minimum of three inspectors; Towers will be positioned at any entrance and any exit of the (DMS).
- Comply with any applicable environmental requirements, to include litter control fencing, silt fencing, dust control, hazardous materials containment area, and/or water retention berms.
- Confine hours of operation of the (DMS) to those determined by Wellington.
- Stage and process all debris in accordance with instructions from Wellington.
- Process debris by methods that may include, but not be limited to, reduction by grinding, air curtain incineration when approved, or other alternate methods of reduction, such as compaction.
- Prior to reduction and to the extent practical, segregate debris between vegetative debris, construction and demolition debris, white goods and hazardous waste. Recycle materials where applicable.
- Develop and implement, with the approval of Wellington, a procedure for management of the receipt of unauthorized and/or ineligible debris at the (DMS).
- Provide Wellington with proper and acceptable documentation (including destination, tickets, volume/weight) for final disposal of debris accepted at the (DMS).
- Upon the closure of the (DMS), restore the site to its pre-use condition, meeting all regulatory requirements for the site closure; Survey the site to verify that it has been restored to pre-use elevation and condition.
- As directed by Wellington, sod, hydro-seed or sprig the property or repair asphalt surfaces once all other site closure issues have been addressed.
- As directed by Wellington conduct post use soil and water test.

- The DMS include a collection center for the public's use.

### **Removal of Hazardous Trees and Hanging Limbs**

As directed by Wellington in writing, for the unit price quoted, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to:

- Remove hanging tree limbs (2) two inches or greater in diameter existing in Wellington.
- Remove hazardous trees existing in Wellington inclusive of the stump if the root balls are more than 50% exposed and place the debris in a suitable place for collection.
- Flush cut hazardous trees existing in Wellington if the root balls are less than 50% exposed and place the debris in a suitable place for collection.
- Load and remove all debris generated from the removal of all hazardous trees and hanging limbs as if it were normal vegetative debris in accordance with 5.2.

All disaster specific eligibility guidelines regarding size and diameter of leaning trees will be communicated to the Contractor, in writing, by Wellington.

### **Right of Way (ROW) Cutting Partially Uprooted or Split Trees (leaners)**

An eligibility determination shall be made by the jurisdiction or its representative using the following criteria:

- A tree is considered "hazardous" if its condition was caused by the disaster, if it is an immediate threat to lives, public health and safety, or improved property; and if it is six inches in diameter or greater, when measured two feet from the ground and one or more of the following criteria are met:
  - It has more than fifty percent (50%) of the crown damaged or destroyed
  - It has a split trunk or broken branches that expose the heartwood
  - It has fallen or been uprooted within a public use area
  - It is leaning at an angle greater than 30 degrees

### **Removal of Hazardous Stumps**

As directed by Wellington in writing, for the unit price quoted, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to manage hazardous uprooted stumps as follows:

- Contractor will be compensated for the process of extracting and transporting, to the (DMS) or final disposal site, hazardous stumps that are (24) twenty-four inches or greater in diameter, measured (24) twenty-four inches from the base of the tree (large stumps) (**This unit cost does not apply to previously extracted stumps placed out for collection, which will be compensated for as normal vegetative debris.**) For contractor extracted stumps, Contractor will be further compensated for the management process through final disposal in accordance with the unit costs per cubic yard of normal vegetative debris. The cubic yardage of each stump will be determined using the FEMA Stump Conversion Table. (See Attachment 1 – FEMA Stump Conversion Table) Where appropriate, Wellington or its representative will measure and further certify the FEMA disaster assistance eligibility of all stumps before removal. Contractor is responsible for determining the method of extraction and transport of stumps, subject to the approval of Wellington. As part of the large stump removal process, the Contractor shall fill the stump hole with fill suitable for the cultivation of replacement trees subject to the approval of Wellington. Hole shall be filled to a point even with the surrounding intact, undisturbed ground elevation.

- Regardless of the need for extraction, the Contractor will be compensated at the unit cost per cubic yard of normal vegetative debris, for the transport to the (DMS) or final disposal site, all hazardous stumps that measure less than (24) twenty-four inches in diameter measured (24) twenty-four inches from the base of the tree (small stumps). If the stumps are transported separate from other normal vegetative debris, the cubic yardage of each stump will be determined using the FEMA Stump Conversion Table (See Attachment 1 – FEMA Stump Conversion Table). It is assumed that most small stumps will be comingled with normal vegetative debris. Contractor is responsible for determining the method of extraction and transport of stumps, subject to the approval of Wellington. As part of the large stump removal process, the Contractor shall fill the stump hole with fill suitable for the cultivation of replacement trees subject to the approval of Wellington. Hole shall be filled to a point even with the surrounding intact, undisturbed ground elevation.

### **Hazardous Waste Removal, Transport, and Disposal**

As directed by Wellington in writing, for the unit price quoted, work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary for the removal, transportation, and disposal of HW and HHW, Infectious Waste and CBRN Waste. The removal, transportation, and disposal of HW and HHW, Infectious Waste and CBRN Waste includes obtaining all necessary Local, State, and Federal Handling Permits and operating in accordance with all Local, State, and Federal regulatory agencies.

The Contractor will identify, separate, collect, transport and dispose of disaster-generated debris determined to be hazardous and/or contaminated, thereby requiring that it be separately managed from other debris. The Contractor will provide trained, experienced and equipped personnel to identify hazardous waste and contaminated debris at its point of origin, as well as to direct the Contractor personnel in the safe and proper handling and disposal of the material. The Contractor will be reimbursed at a fixed rate for this service.

### **Designation and Management of Staging Areas**

Contractor shall identify staging areas in collaboration with Wellington for the purposes of truck/equipment certification, provision of temporary fueling or vehicle maintenance (as required), and other operational service functions related to debris removal efforts. Contractor shall provide temporary tent, sanitary and other appropriate conveniences necessary for the care and well-being of all Contractor and sub-contractor personnel. Wellington will approve of the location, size, layout and services to be provided at any staging area established by the Contractor, who will insure that each area is managed in accord with all applicable regulatory requirements and in a manner to minimize disruption to the surrounding neighborhoods.

### **Disaster Recovery Technical Assistance**

At no additional cost to Wellington, the Contractor will provide Disaster Recovery Technical Assistance to Wellington to assist with guidance and consultation on all aspects of the recovery process. This assistance shall include documentation and management for the public assistance program, planning, training and exercise development, as well as attendance at Wellington's Emergency Operations Center (EOC) during activations of the EOC for exercise and actual emergency events as requested by the Contract Administrator.

## **PERFORMANCE OF SERVICES**

### **Description of Service**

Contractor agrees to perform contracted services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations, and permits. Only the highest quality



workmanship will be acceptable. Services, equipment and workmanship not conforming to the intent of Agreement or meeting the approval of Wellington may be rejected. Replacements and/or rework, as required, will be accomplished on a timely basis at no additional cost to Wellington.

### **Cost of Services**

Contractor shall bear all of its own operating costs and is responsible for all permit and license fees, and maintenance of its own trucks and equipment to keep such property in a condition and manner adequate to accomplish contracted services. Upon receipt and acceptance of full documentation of the performance of services and an accurate invoice as specified by Wellington, the Contractor shall be reimbursed at the contracted unit cost basis.

Unknown and/or unforeseen events or conditions may require an adjustment to the unit costs as originally contracted. Any amendments, extensions or changes to the scope of contracted services or unit prices are subject to full negotiations between the Contractor and Wellington and approval by formal Village action.

In addition, all costs related to labor, materials and equipment shall be fair, reasonable, and where applicable, consistent with costs set forth in the most current version of the FEMA Schedule of Equipment Rates.

## **STANDARDS OF PERFORMANCE**

### **Contractor representative and General Operations Plan:**

Contractor shall identify a Contractor's representative who shall have the authority to implement all actions required to begin the performance of contracted services as set out in this Agreement, the Contractor's General Operations Plan and Wellington's Work Authorization. A specific Operations Plan may be required of the Contractor for each disaster.

### **Mobilization**

Unless otherwise required herein; when a notice to proceed in advance of an event has been received by Contractor, he/she will make all necessary arrangements to mobilize some equipment within 24 hours of notice to proceed, mobilize a minimum of 50% of the required resources within 48 hours and 100% of the required resources within 96 hours to commence and conduct these contracted services. Wellington may take such other actions as necessary to address the failure of the contractor to mobilize resources on the schedule required by Wellington.

## **GENERAL RESPONSIBILITIES**

### **Other Agreements**

Wellington may be required to enter into agreements with Federal and/or State agencies for disaster relief. Contractor shall be bound by the terms and conditions of such agreements, regardless of the additional burdens of compliance. Wellington will provide Contractor with a copy of any applicable agreements.

### **Wellington's Obligations**

Wellington shall furnish all information and documents necessary for the commencement of contracted services, including a written Work Authorization.

### **Contractor's Conduct of Work**

Contractor shall be responsible for planning and conducting all operations in a satisfactory and professional

manner. All Contractor personnel and subcontractors shall demonstrate and maintain a courteous and responsible demeanor toward all persons.

#### **Supervision by Contractor**

Contractor will supervise and/or direct all contracted services performed by its employees, agents and subcontractors. Contractor is solely responsible for all means, methods, techniques, safety and other procedures. Contractor will employ and maintain a qualified project manager at the work site(s) who shall have full authority to act on behalf of Contractor. All communications given to the project manager by the Contract Administrator or designee shall be as binding as if given to Contractor.

#### **Self-sufficiency of Contractor and Subcontractors**

The Contractor shall ensure that its work force, including subcontractors, maintain self-sufficiency related to fuel, vehicle repair/maintenance, housing, sanitation food and related accommodations, in a manner that is consistent with local requirements and minimizing adverse effects on the community.

#### **Damages by Contractor**

Contractor shall be responsible for conducting all operations, whether contemplated by this Agreement or later requested as specialized services, in such a manner as to cause the minimum damage possible to existing public, private and commercial property and/or infrastructure. Contractor shall also be responsible for any damages due to the negligence of its employees and subcontractors. Contractor must report such damage to the Contract Administrator in writing within 24 hours. Should any property be damaged due to negligence on the part of the Contractor, Wellington may either bill Contractor for the damages, withhold funds due to Contractor, or the contractor may also repair all damage to the satisfaction of Wellington. The determination of whether "negligence" has occurred shall be made by Wellington.

#### **Contractor's Duty Regarding Other Contractor(s):**

Contractor acknowledges the presence of other contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work.

#### **Contractor's Ownership of Debris:**

All debris once collected by the contractor shall become the property of the Contractor or by written notification to the Contractor Wellington may exercise ownership of debris for removal and lawful disposal. The debris may consist of, but not be limited to, vegetation, construction and demolition debris, white goods and collected hazardous materials.

#### **Contractor's Disposal of Debris:**

The Contractor is responsible for locating and making available for use, a final disposal site or sites for all types of debris. In the event that the Contractor is tasked with disposal of debris, these sites shall be used by the Contractor unless alternate sites are approved by Wellington in writing. The contractor may be tasked with hauling debris to the a facility designated by Wellington, in which case the Contractor will be compensated for the tipping fee as a direct pass through of costs. Wellington may at its option and as may be permitted by the disposal facility, make arrangements to pay the disposal facility directly for the tipping fee.

In accordance with all applicable law and regulation, the Contractor shall be responsible for determining and executing the method and manner for processing debris at the (DMS) if used.

## **GENERAL TERMS AND CONDITIONS OF CONTRACT**

### **Multiple, Scheduled Passes**

Contractor shall make scheduled passes and/or unscheduled passes of each area impacted by the event, at the direction of Wellington. Wellington shall direct the interval timing of all passes. Sufficient time shall be permitted between subsequent passes to accommodate reasonable recovery and additional debris placement at the ROW by the citizens and Wellington. The Contractor will document the completion of all passes based on direction from Wellington and will provide this documentation to Wellington at the frequency requested by Wellington. Partial removal of debris piles is strictly prohibited. The Contractor shall not move from one designated work area to another designated work area without prior approval from Wellington or its representative. Any eligible debris, such as fallen trees, which extends onto the ROW from private property, shall be cut at the point where it enters the ROW, and that part of the debris which lies within the ROW shall be removed. The Contractor shall not enter onto private property during the performance of this contract unless specifically authorized by Wellington, in writing.

### **Clean as you go Policy**

The contractor shall provide a “clean as you go” policy and supervise and enforce such policy during debris management operations. Loose leaves and small debris in excess of one bushel basket shall be removed within the designated area. No debris shall be left on the road surface. No single piece of debris larger than 6 inches in any dimension shall be left on site. Hand crews and rakes will be required.

### **Operation of Equipment**

Contractor shall operate all trucks, trailers and all other equipment in compliance with any/all applicable federal, state and local rules and regulations. Equipment shall be in good working condition. All loading equipment shall be operated from the road, street, or ROW using buckets and/or boom and grapple devices to collect and load debris. No equipment shall be allowed behind the curb or outside of the public ROW unless otherwise directed by Wellington. Should operation of equipment be required outside of the public ROW, the Contractor will ensure that a ROE Agreement has been obtained prior to property entry. The utmost care shall be given to the protection of trees and built infrastructure that remains in the disaster area such that no additional damage is caused by the contractor’s activities.

### **Security of Debris during Hauling**

Contractor shall be responsible for the security of debris on/in each vehicle or piece of equipment utilized to haul debris. Prior to leaving the loading sites, Contractor shall ensure that each load is secure and trimmed so that to the extent practical no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted and secured during transport in accordance with FDOT guidelines. As required, Contractor will survey the primary routes used by Contractor for debris hauling as soon as possible after the transport and will recover fallen or blown debris from the roadway(s).

### **Traffic Control:**

Contractor shall mitigate impact on local traffic conditions to the greatest extent possible. Contractor is responsible for establishing and maintaining appropriate traffic control in accordance with the most current edition of the US Department of Transportation Manual or Uniform Traffic Control Devices (MUTCD). Contractor shall provide sufficient signage, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all debris removal, collection, reduction and/or disposal sites.

### **Work Days/Hours**

Work days and/or work hours shall be as directed by Wellington following consultation and notification to

Contractor. Working hours on holidays shall be at the discretion of Wellington.

### **Work Safety**

Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. Contractor will provide such safety equipment, training and supervision as may be required by Wellington and/or other governmental regulations. Contractor shall ensure that its subcontracts contain an equivalent safety provision. Monitoring towers shall be properly constructed for safety.

### **Inspection of Contractor Operations:**

All debris shall be subject to inspection by Wellington and other public authorities to ensure compliance with this Agreement, applicable federal, state and local laws, and in accordance with generally accepted standards of emergency management professionals. Wellington will, at all times, have access to all work sites and disposal areas. In addition, authorized representatives and agents of the government shall be permitted to inspect all work, materials, invoices, and other relevant records and documentation.

### **Corrective Actions Required of Contractor**

When instructed by Wellington's representative, the Contractor will immediately implement corrective actions to address health and safety issues and/or any other actions inconsistent with any of the terms of this agreement, as determined by Wellington in its sole discretion. Notify Wellington within 24 hours.

### **Ineligible Work:**

Unless otherwise advised in writing by Wellington, the Contractor will not be paid for the removal, transportation, storage, reduction and/or disposal of any material when not previously instructed by Wellington that such actions are eligible for state and/or Federal reimbursement.

### **Eligibility Inspections:**

Wellington's monitors shall inspect each load of debris, or shall inspect at some other frequency of Wellington's direction, to verify that the contents are in accordance with the accepted definition of eligible debris.

### **Eligibility Determinations:**

Wellington employees (debris monitors) will make determinations as to whether debris is eligible for removal. The monitor's duties shall include:

- Report issues to their direct supervisor which require action (such as safety concerns, contractor non-compliance and equipment use)
- Accurately measure and certify truck capacities (recertify on a regular basis)
- Properly and accurately complete and physically control load tickets (in tower and field)
- Ensure that trucks are accurately credited for their load
- Ensure that trucks are not artificially loaded (ex: debris is wetted, debris is fluffed-not compacted)
- Validate hazardous trees, including hangers, leaners, and stumps
- Ensure that hazardous wastes are not mixed in loads
- Ensure that all debris is removed from trucks at Debris Management Sites (DMS)
- Report if improper equipment is mobilized and used
- Report if contractor personnel safety standards are not followed
- Report if general public safety standards are not followed
- Report if completion schedules are not on target

- Ensure that only debris specified in the contract is collected (and is identified as eligible)
- Report to supervisor if debris removal work does not comply with all local ordinances as well as State and Federal regulations (i.e., proper disposal of hazardous waste)
- Record the hours equipment was used, include downtime of each piece of equipment by day (Time & Materials contract)

***Only FEMA has the authority to make eligibility decisions; contractors cannot make eligibility determinations.***

If the Contractor has been tasked in writing with the removal of only eligible debris, and subsequently any load is determined to contain material that does not conform to the definition of eligible debris, the load will be ordered to be deposited at another approved and certified receiving facility. No payment will be allowed for that load and Contractor will not invoice Wellington for such loads. Wellington, through its authorized representative, will be the sole judge as to whether the material conforms to the definition of eligible debris. This does not preclude payment for non eligible debris that is collected at the written direction of Wellington in a Work Authorization.

### **Other Agencies**

The term "government" as used in this Agreement refers to those governmental agencies which may have a regulatory or funding interest in this Agreement.

## **REPORTS, CERTIFICATIONS AND DOCUMENTATION**

### **Reports**

Contractor shall submit periodic, written reports in a format required by Wellington documenting the progress of debris removal and disposal. These reports may include, but are not limited to:

#### **Daily Reports**

Daily reports may detail the locations where passes for debris removal were conducted, the quantity of debris (by type) removed and disposed of, the total number of personnel crews engaged in debris management operations, and the number of grinders, chippers and mulching machines in operation. Contractor will also report damages to private property caused by the debris operation or damage claims made by citizens and such other information as may be required to completely describe the daily conduct of Contractor's operations within 24 hours.

#### **Weekly Summaries**

A summary of all information contained in the daily reports as described in Section 6.1.1, within two days of the close of the week. At the request of Wellington, the data making up the weekly summaries shall also be submitted in electronic format, utilizing Microsoft Excel or Access or proprietary computer program as may be approved by Wellington. On line access to the data is preferred. The submitted electronic weekly data will include: Collection Contractor, load ticket number, load date, load location, truck yardage, percent full, calculated yardage (or weight if applicable) field monitor name / number, (DMS) location, tower monitor / name, debris materials categorization, and location of collection, e.g., ROW, FHWA, Canal, etc.

### **Report Delivery:**

The delivery schedule, point of delivery and the receiving personnel for the debris operations report will be directed by Wellington, in consultation with Contractor.

### **Data Reconciliation**

Reconciliation of data will be accomplished weekly between the Contractor and Wellington's representative. All discrepancies will be resolved within 5 days.

### **Final Project Closeout:**

Upon final inspection and/or closeout of the project by Wellington, Contractor shall prepare and submit a detailed description of all debris management activities in an electronic spreadsheet, to include, but not limited to the total volume, by type of debris hauled, reduced and/or disposed of, final disposal locations and amounts of the debris managed by the contractor, plus the total cost of the project invoiced to Wellington. The contractor shall provide, upon request of Wellington and/or no later than project closeout, a release of liens demonstrating that all subcontractors and material and service suppliers to the Contractor have been fully paid. Agreement will provide any other additional information as may be necessary to adequately document the conduct of the debris management operations for Wellington and/or government. Final project reconciliation must be approved by Wellington.

### **Certifications**

The Contractor will adhere to the process for certification of personnel and vehicles established by Wellington, to include the following:

#### **Certification of Vehicles and Load Capacity**

Contractor shall ensure that all equipment is certified in accordance with most current Federal and Wellington procedures. After a disaster, Wellington, or their designated representative, will begin the equipment certification at a pre-designated site, or at staging areas established by the Contractor.

All Contractor and subcontractor trucks shall have valid registrations, insurance and meet basic operational criteria: tailgates or equivalent containment devices, tarps, etc., as well as all applicable motor vehicle safety requirements. Drivers shall possess valid licenses.

Truck body dimensions shall be measured, and information recorded on certification forms provided by the contractor with calculated capacity in cubic yards, license number, truck identification number assigned by the Contractor and a short physical description of the truck and photo as noted. The Contractor shall provide two placards for each truck, which shall be affixed on opposite sides of the truck body. The placards shall clearly display the contracting jurisdiction, the contractor, local government agency, and subcontractor name (if applicable), the vehicle number, the certified volume of the truck, and the date of certification. The placards will be consistent with the Standardized Debris Truck Placard (Appendix C). In the event that waste is disposed of at a facility at a per ton rate, the tare weight of the hauling vehicle shall be recorded on the certification forms.

The truck driver will be provided up to two (2) copies of the certification sheet for the contractor and sub-contractor's records. Trucks may be periodically recertified by Wellington.

#### **Certification of Personnel**

The Contractor will certify to Wellington that all Contractor and Subcontractor personnel have received required and adequate training in relevant emergency response, disaster recovery, and debris management operations. Upon request of Wellington, the Contractor will provide documentation certifying the adequacy of the training, experience and capabilities of all Contractor and subcontractor personnel, to include but not be limited to the following:

- Senior management personnel of the Contractor assigned to implement work authorizations pursuant to this agreement will participate, upon request, in training and briefing sessions held by representatives of Wellington.
- Senior, supervisory personnel of the Contractor and all subcontractors thereto will have received training in debris management, and the implementation of the National Incident Management System (NIMS).
- Personnel assigned by the Contractor as responsible for data management, invoicing and other documentation duties will be trained in the data management concepts and approaches to be used by Wellington as may be required.
- Vehicle and equipment operators will be fully licensed and certified, as required by applicable local, State and Federal statutes and regulations.
- Upon their deployment for field operations, all Contractor and subcontractor personnel will be briefed or trained appropriately in their duties, responsibilities, and the procedures to be utilized throughout the debris management process, including safety procedures, load ticket management procedures, and accident reporting procedures

#### **Utilization of electronic automated debris management system**

The contractor shall provide an electronic automated debris management system that shall create load tickets electronically, eliminating the need for had written and scanned tickets. The ADMS features shall include, at a minimum, the following:

1. Paperless electronic (handheld device) load ticket generation and data collection;
2. Debris vehicle certification data capture at certification site;
3. Encrypted and secure field data transfer (field to DMS, DMS to server);
4. Accessible secure database for government and Disaster Debris Removal Contractor(s) use. Database will be internet accessible by Disaster Debris Removal Contractor(s), SWA, State and other public entities on a need to know basis;
5. Minimal manual entry of load ticket data fields (e.g., load call, type of debris);
6. Automation of debris pickup location thru use of GPS technologies;
7. Evaluation of daily event status using web-based reporting and GIS tools;
8. Coordination of Disaster Debris Removal Contractor(s) invoices, FEMA documentation and applicant payment process enabled thru an integrated database management system;

The “load ticket” will be used for documenting each load of debris from its origin to the (DMS) and/or final disposal location, as indicated. The “load ticket” utilized shall provide opportunity for recording the following information: ticket number, Contract number, Prime contractor’s name or designated number, Date, Truck number , Truck driver’s name, type of material (Vegetation, Construction & Demolition, White Goods, Household Hazardous Waste or Other), Load Location (GPS or address preferred), Loading date/time (departure from collection location), Loading Site Monitor name/signature, Truck capacity in cubic yards or tons, Load Size, either cubic yards (percent of actual) or tons, Unloading location, Unloading date/time (arrival at disposal site), Unloading site monitor name/signature.

#### **Additional Supporting Documentation:**

Contractor shall submit sufficient reports and/or documentation for debris loading, hauling, disposal, and load capacity measurements, and any other services provided by Contractor as may be required by Wellington and/or other governmental entity to support requests for debris project reimbursement from external funding sources.

#### **Report Maintenance:**

Contractor will be subject to audit by federal, state and local agencies pursuant to this Agreement. Contractor will maintain all reports, records, debris reporting tickets and Agreement correspondence for a period of not less than three (3) years.

## **ADDITIONAL SERVICES**

Wellington wishes the Contractor to be prepared to provide the following additional services.

### **Debris removal from canals**

The Contractor will remove debris resulting from the event from the drainage and navigation canals and adjacent banks, as directed by Wellington. Debris to be removed will be vegetative and/or construction and demolition (C&D) debris affecting the canals, but excludes removal of damaged and/or abandoned boats and cars. Debris will be placed such as to be managed as normal vegetative and/or construction and demolition (C&D) debris in accordance with the Component or Consolidated services process specified by Wellington in writing. The Contractor will be reimbursed at a fixed rate for this service.

### **Abandoned Vehicles**

The Contractor will remove motor vehicles damaged by the disaster event and/or abandoned by the owner due to the circumstances of the event. Wellington will identify the area(s) from which motor vehicles are to be removed. Motor vehicles will be processed by or for the Contractor in a manner that complies with all requirements for removal and processing of hazardous materials, e.g., gasoline, oils and other fluids. The Contractor will also ensure the proper final disposal of the removed vehicle. The Contractor will be reimbursed at a fixed rate, inclusive of all towing, processing and disposal costs.

### **Boats**

Boats severely damaged by the disaster event, and abandoned in or on the canals, marinas, and beaches of Wellington will be collected by the Contractor, processed for removal and disposal of hazardous materials in accord with applicable regulations, demolished and transported to a suitable location for final disposal. Wellington will determine the vessels to be removed, will establish that they have been legally abandoned by their owners, and will take other necessary steps as required by law before directing the Contractor to remove and dispose of the vessel. The Contractor is otherwise responsible for compliance with all regulations and requirements applicable to the removal and disposal process. Boat debris shall be placed such as to be managed as C&D debris in accordance with the Component or Consolidated services process specified by Wellington in writing. The Contractor will be reimbursed at a fixed rate for this service.

### **Temporary satellite communications**

The Contractor will provide satellite communications units capable of voice, text messaging, data transfer and Internet access for use by Wellington personnel in the event of failure of other communications systems. The units will be rented/leased to Wellington and will be fully equipped, including AC/DC adapters (including automotive battery chargers), instructions and carrying cases. The units will be fully operational upon delivery to Wellington, without further action by Wellington. The Contractor will be reimbursed at a fixed rate for this service.

### **Emergency power generation**

The Contractor will provide mobile electric power generation units for facilities and locations located within Wellington. Wellington will define the size and fuel type of the mobile units, which will be leased to Wellington. The Contractor will deliver the units to the facilities or locations designated by Wellington, and ensure connection of the unit to the existing electrical wiring by a licensed electrician.



The Contractor will also ensure the unit is fueled, tested, and demonstrated to be operational prior to departure from the location. The Contractor will also provide fuel for the duration of the units use by Wellington, and will have readily available technical support and repair or replacement services. The Contractor will be reimbursed a fixed rate for this service.

### **Pricing Schedule**

Unit cost quoted: Deduct trade discounts and quote firm net prices. Prices must be stated in units of measure specified in the RFP requirements. In case of discrepancy in computing the amount of the RFP, the UNIT PRICE/RATE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in special conditions). Discounts to be given for prompt payment are to be inclusive of all proposed pricing. Award, if made, will be in accordance with terms and conditions stated herein. Each item must be proposed separately, and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of awards. All prices Quoted shall be firm for one year. Request for changes will require written notification ninety (90) days prior to the annual contract anniversary.

**IMPORTANT: Pricing shall be provided by each proposer in the schedule of values spreadsheet attached separately.**

## PROPOSAL CHECK LIST (TAB# 1)

Please check each item and make sure that all required information is included in your Proposal submission. Failure to submit this information may result in your submission being rejected as being a non-responsive and responsible Proposer.

- YES\_\_\_ NO\_\_\_ 1. Original and five copies and (1) PDF Electronic copy (CD)
- YES\_\_\_ NO\_\_\_ 2. Cover Letter and Table of Contents
- YES\_\_\_ NO\_\_\_ 3. Proposal Checklist and Submittal Form
- YES\_\_\_ NO\_\_\_ 4. Evidence of Insurance Certification
- YES\_\_\_ NO\_\_\_ 5. Current Licenses/Certificates of Authorization
- YES\_\_\_ NO\_\_\_ 6. Qualifications and Experience including references (form attached)
- YES\_\_\_ NO\_\_\_ 7. Technical Approach and Methodology
- YES\_\_\_ NO\_\_\_ 8. Price Proposal
- YES\_\_\_ NO\_\_\_ 9. Financial/Bonding Capacity
- YES\_\_\_ NO\_\_\_ 10. Proposer's Certification
- YES\_\_\_ NO\_\_\_ 11. Conflict of Interest Form
- YES\_\_\_ NO\_\_\_ 12. Questionnaire
- YES\_\_\_ NO\_\_\_ 13. Drug Free Workplace
- YES\_\_\_ NO\_\_\_ 14. Acknowledgment of Addendums

**PROPOSAL SUBMITTAL FORM (TAB #1)**

To:  
Wellington  
12300 Forest Hill Boulevard  
Wellington, Florida 33414

\_\_\_\_\_ agrees to provide  
(Vendor)

Disaster Recovery Services to Wellington as defined in this RFP in accordance with the requirements of the Specifications and RFP Documents.

**The undersigned Proposer has carefully examined the Specifications and Proposal/Contract Documents and is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done.**

The undersigned agrees to provide the service called for by the Specifications and RFP Documents, in the manner prescribed therein and to the standards of quality and performance established by the RFP.

The undersigned agrees to the right of Wellington to hold all Proposals for a period not to exceed (180) days after the date of Proposal opening stated in the RFP.

The undersigned accepts the payment policies specified in the RFP documents.

The undersigned agrees that within fifteen (15) days from the date of acceptance of this Proposal, to execute the agreement and provide the required certificates of insurance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(Month) (Year)

**INDIVIDUAL, FIRM OR PARTNERSHIP**

By: \_\_\_\_\_ / \_\_\_\_\_  
(Signature) (Print name)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Social Security Number or Taxpayer Identification Number: \_\_\_\_\_

**CORPORATION**

By: \_\_\_\_\_ / \_\_\_\_\_  
(Signature) (Print name)

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** (\_\_\_\_) \_\_\_\_\_ **Fax:** (\_\_\_\_) \_\_\_\_\_

**Taxpayer (EIN) Identification Number:** \_\_\_\_\_

**State Under Which Corporation Was Chartered:** \_\_\_\_\_

**Corporate President:** \_\_\_\_\_  
(Print Name)

**Corporate Secretary:** \_\_\_\_\_  
(Print Name)

**Corporate Treasurer:** \_\_\_\_\_  
(Print Name)

**CORPORATE SEAL**

**Attest By:** \_\_\_\_\_  
Secretary

**ADDENDA RECEIPT VERIFICATION**

**Proposer acknowledges the receipt of Addenda Nos.** \_\_\_\_\_

**REFERENCE FORM (TAB # 4)**

COMPANY NAME, ADDRESS, CITY, STATE, ZIP PHONE & FAX NUMBER		
Company Name:		
Address:		
Contact Name:		
Phone:	Fax:	E-Mail:
Company Name:		
Address:		
Contact Name:		
Phone:	Fax:	E-Mail:
Company Name:		
Address:		
Contact Name:		
Phone:	Fax:	E-Mail:
Company Name:		
Address:		
Contact Name:		
Phone:	Fax:	E-Mail:

### PROPOSER'S CERTIFICATION (TAB #8)

I have carefully examined the Request for Proposal, General Information, Specifications and any other documents accompanying or made a part of this Request for Proposal.

I hereby propose to furnish the goods or services specified in the Request for Proposal. I agree that my proposal will remain firm for a period of up to 180 days in order to allow the Village of Wellington adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Village of Wellington or any other proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 278.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

\_\_\_\_\_  
Name of Business

By:

Sworn to and subscribed before me

This \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title, Typed or Printed

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Mailing Address

State of \_\_\_\_\_

\_\_\_\_\_  
City, State, Zip Code

(\_\_\_\_)\_\_\_\_\_  
Telephone Number Email Address

(\_\_\_\_)\_\_\_\_\_  
Facsimile Number

## **CONFLICT OF INTEREST STATEMENT (TAB#9)**

This Proposal/Agreement (whichever is applicable) is subject to the conflict of interest provisions of the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, the Florida Statutes and Chapter 2 of the Code of Federal Regulations, Part 200. During the term of this Agreement and any renewals or extensions thereof, the VENDOR shall disclose to WELLINGTON any possible conflicts of interests. The VENDOR's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of WELLINGTON. The terms below shall be defined in accordance with the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and Ch. 112, Part III, Florida Statutes.

### **CHECK ALL THAT APPLY.**

☐ To the best of our knowledge, the undersigned business has no potential conflict of interest for this Agreement due to any other clients, contracts, or property interests.

☐ To the best of our knowledge, the undersigned business has no employment or other contractual relationship with any WELLINGTON employee, elected official or appointed official.

☐ To the best of our knowledge, the undersigned business has no officer, director, partner or proprietor that is a WELLINGTON purchasing agent, other employee, elected official or appointed official. The term "purchasing agent", "elected official" or "appointed official", as used in this paragraph, shall include the respective individual's spouse or child, as defined in Ch. 112, Part III, Florida Statutes.

☐ To the best of our knowledge, no WELLINGTON employee, elected official or appointed official has a material or ownership interest (5% ownership) in our business. The term "employee", "elected official" and "appointed official", as used in this paragraph, shall include such respective individual's relatives and household members as described and defined in the Palm Beach County Code of Ethics.

☐ To the best of our knowledge, the undersigned business has no current clients that are presently subject to the jurisdiction of WELLINGTON's Planning, Zoning and Building Department.

☐ The undersigned business, by attachment to this form, submits information which may be a potential conflict of interest due to any of the above listed reasons or otherwise.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THE FAILURE TO CHECK THE APPROPRIATE BLOCKS ABOVE OR TO ATTACH THE DOCUMENTATION OF ANY POSSIBLE CONFLICTS OF INTEREST MAY RESULT IN DISQUALIFICATION OF YOUR BID/PROPOSAL OR IN THE IMMEDIATE CANCELLATION OF YOUR AGREEMENT, WHICHEVER IS APPLICABLE.

---

**COMPANY NAME**

---

**AUTHORIZED SIGNATURE**

---

**NAME (PRINT OR TYPE)**

---

**TITLE**

## QUESTIONNAIRE (TAB #10)

PROJECT: Disaster Recovery Services

OWNER: VILLAGE OF WELLINGTON

CONSULTANT:

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### INSTRUCTIONS

- A. All questions are to be answered in full, without exception. If copies of other documents will answer the question completely, they may be attached and clearly labeled. If additional space is needed, additional pages may be attached and clearly labeled.
- B. The Village of Wellington shall be entitled to contact each and every person/company listed in response to this questionnaire. The proposer, by completing this questionnaire, expressly agrees that any information concerning the proposer in possession of said entities may be made available to the Village.
- C. Only complete and accurate information shall be provided by the proposer. The proposer hereby warrants that, to the best of its knowledge and belief, the responses contained herein are true, accurate, and complete. The proposer also acknowledges that the Village is relying on the truth and accuracy of the responses contained herein. If it is later discovered that any material information given in response to a question was provided by the proposer, knowing it was false, it shall constitute grounds for immediate disqualification, termination, or rescission by the Village of any subsequent agreement between the Village and the proposer.
- D. If there are any questions concerning the completion of this form, the proposer is encouraged to contact Danielle Zembruski: (561) 791-4107.



## QUESTIONNAIRE

Proposer's Name: \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

\_\_\_\_\_

Official Representative: \_\_\_\_\_

Individual

Partnership (Circle One)

Corporation

If a Corporation, answer this:

When Incorporated: \_\_\_\_\_

In what State: \_\_\_\_\_

If Foreign Corporation:

Date of Registration with  
Florida Secretary of State: \_\_\_\_\_

Name of Resident Agent: \_\_\_\_\_

Address of Resident Agent: \_\_\_\_\_

President's Name: \_\_\_\_\_

Vice President's Name: \_\_\_\_\_

Treasurer's Name: \_\_\_\_\_

Members of Board of Directors: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If a Partnership:

Date of Organization: \_\_\_\_\_

General or Limited Partnership\*: \_\_\_\_\_

Name and Address of Each Partner:

Name

Address

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

\*Designate general partners in Limited Partnership

1. Number of years of relevant experience in operating similar business: \_\_\_\_\_

2. Have any similar agreements held by proposer for a similar project to the proposed project ever been canceled?

Yes ( )

No ( )

If yes, give details on a separate sheet.

3. Has the proposer or any principals of the applicant organization failed to qualify as a responsible proposer, refused to enter into a contract after an award has been made, failed to complete a contract during the past five (5) years, or been declared to be in default in any contract in the last five (5) years?

If yes, please explain:

4. Has the proposer or any of its principals ever been declared bankrupt or reorganized under Chapter 11 or put into receivership?

If yes, give date, court jurisdiction, action taken, and any other explanation deemed necessary.

5. Person or persons interested in the proposal and Questionnaire Form \_\_\_\_\_ (have) \_\_\_\_\_ (have not) been convicted by a Federal, State, County or Municipal Court of any violation of law, other than traffic violations. To include stockholders over ten percent (10%). (Strike out inappropriate words).

Explain any convictions on a separate sheet.

6. Lawsuits (any) pending or completed involving the corporation, partnership or individuals with more than ten percent (10%) interest:

A. List all pending lawsuits

B. List all judgments from lawsuits in the last five years:

C. List any criminal violations and/or convictions of the proposer and/or any of its principals:

7. Conflicts of Interest. The following relationships are the only potential, actual or perceived conflicts of interest in connection with this proposal: (If none, so state). Please also include a list of any clients within the boundaries of the Village of Wellington that the proposer or its firm has had within the last five (5) years.

The proposer understands that information contained in this Questionnaire will be relied upon by Wellington in awarding the proposed Agreement and such information is warranted by the proposer to be true. The undersigned proposer agrees to furnish such additional information, prior to acceptance of any proposal relating to the qualifications of the proposer, as may be required by the Village Manager.

*The proposer further understands that the information contained in this questionnaire may be confirmed through a background investigation conducted by the Palm Beach Sheriff's Department. By submitting this questionnaire, the proposer agrees to cooperate with this investigation, including but not necessarily limited to fingerprinting and providing information for credit check.*

I certify that the information and responses provided on this Questionnaire are true, accurate and complete. The Owner of the Project or its representatives may contact any entity or reference listed in this Questionnaire. Each entity or reference may make any information concerning the Contractor available to the Owner.

Dated \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_ / \_\_\_\_\_  
(Signature) (Print name)

### **DRUG FREE WORKPLACE (TAB #11)**

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by Wellington for the procurement of commodities or contractual services, a Bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under Bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

---

Vendor's Signature

STUMP CONVERSION TABLE  
ATTACHMENT 1

## Stump Conversion Table

### Diameter to Volume Capacity

The quantification of the cubic yards of debris for each size of stump in the following table was derived from FEMA field studies conducted throughout the State of Florida during the debris removal operations following Hurricanes Charley, Frances, Ivan and Jeanne. The following formula is used to derive cubic yards:

$$\frac{[(\text{Stump Diameter}^2 \times 0.7854) \times \text{Stump Length}] + [(\text{Root Ball Diameter}^2 \times 0.7854) \times \text{Root Ball Height}]}{46656}$$

0.7854 is one-fourth Pi and is a constant.

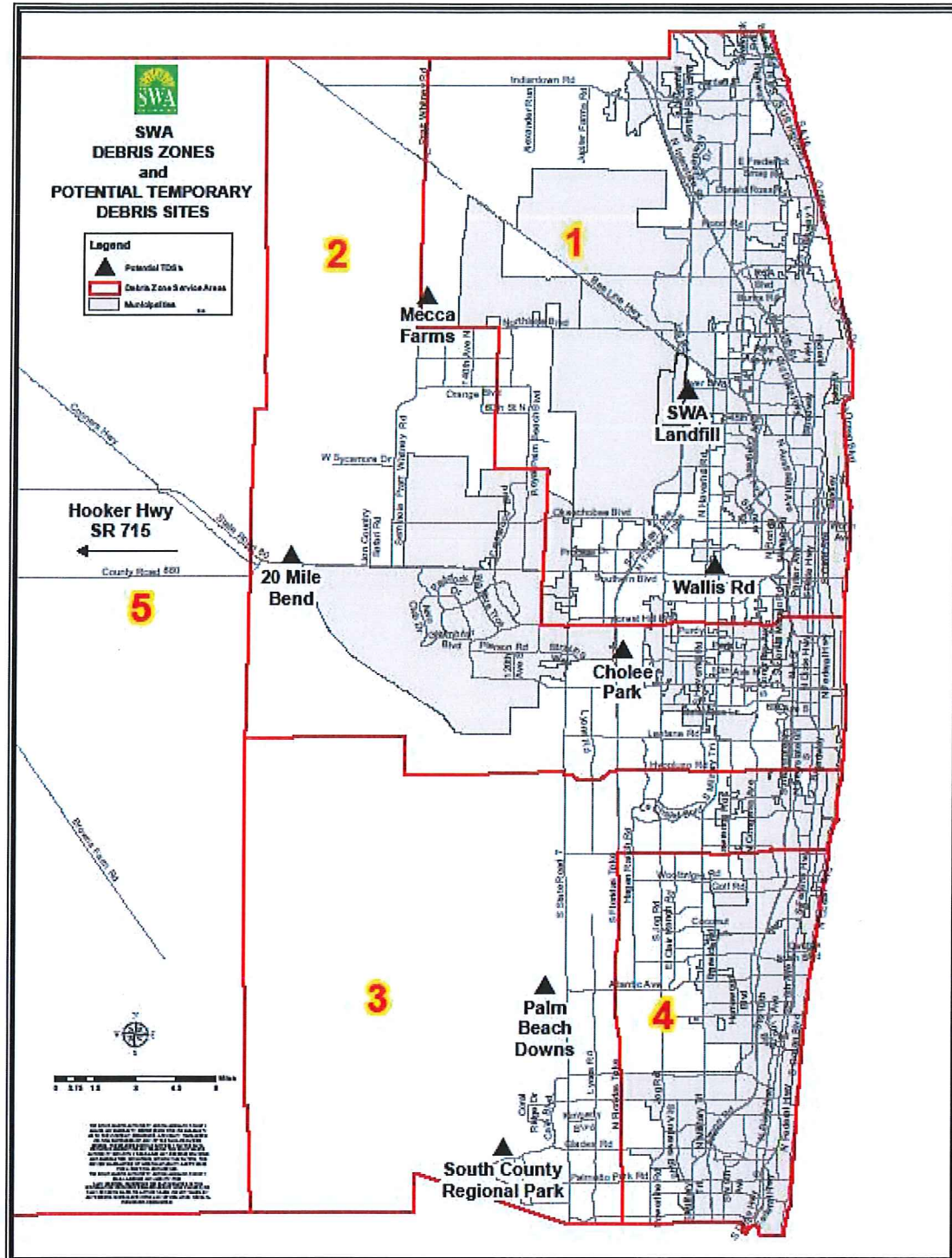
46656 is used to convert cubic inches to cubic yards and is a constant

The formula used to calculate the cubic yardage used the following factors, based upon findings in the field:

- Stump diameter measured two feet up from ground
- Stump diameter to root ball diameter ratio of 1:3.6
- Root ball height of 31"

Stump Diameter (Inches)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
6	0.3	46	15.2
7	0.4	47	15.8
8	0.5	48	16.5
9	0.6	49	17.2
10	0.7	50	17.9
11	0.9	51	18.6
12	1	52	19.4
13	1.2	53	20.1
14	1.4	54	20.9
15	1.6	55	21.7
16	1.8	56	22.5
17	2.1	57	23.3
18	2.3	58	24.1
19	2.6	59	24.9
20	2.9	60	25.8
21	3.2	61	26.7
22	3.5	62	27.6
23	3.8	63	28.4
24	4.1	64	29.4
25	4.5	65	30.3
26	4.8	66	31.2
27	5.2	67	32.2
28	5.6	68	33.1
29	6	69	34.1
30	6.5	70	35.1
31	6.9	71	36.1
32	7.3	72	37.2
33	7.8	73	38.2
34	8.3	74	39.2
35	8.8	75	40.3
36	9.3	76	41.4
37	9.8	77	42.5
38	10.3	78	43.6
39	10.9	79	44.7
40	11.5	80	45.9
41	12	81	47
42	12.6	82	48.2
43	13.3	83	49.4
44	13.9	84	50.6
45	14.5		

SWA POTENTIAL TEMPORARY DEBRIS SITES  
ATTACHMENT 2





## POTENTIAL DEBRIS MANAGEMENT SITES

SITE	SITE LOCATION			
	SWA Site 7 Jog Road			
	South County Regional Park- between Yamato Road and Glades Road, bordering Loxahatchie National Wildlife Refuge			
	Hooker Hwy – Southeast Corner of Hwy 715 & Hwy 80			
	Cholee Park – Forest Hill and FI Turnpike			
	Airport Site – Wallis Road			
	20 Mile Bend			
	Mecca Farms			

AERIAL OF VILLAGE OF WELLINGTON DEBRIS SITE  
ATTACHMENT 3





Wellington GIS



## Aerial of Debris Site

**Subject Area**  
Village of Wellington  
Palm Beach County, FL



SHEET NO.	1	DATE	3/17/2016
DRAWN	Christian Nakley	SCALE	1 inch = 100 feet
REQUESTED	Danielle Zembozinski	FILENAME	Myworkspac8
Work Order #:	000000		



FHWA 1273  
ATTACHMENT 4

## 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.



SAMPLE AGREEMENT  
ATTACHMENT 5

## **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 \_\_\_\_\_ corporation as a Primary Vendor (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 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.

#### **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 payments hereunder are inclusive of all licenses, taxes 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.

##### **A. 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 \_\_\_\_ of each month. The period covered by each invoice is one month, ending on the \_\_\_\_ 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 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.

##### **B. 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 a Florida corporation in good standing, organized and existing under the laws of the State of Florida. 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 or persons or property.

## **ARTICLE 6. TERM AND TERMINATION**

### **A. 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 (2) additional one (1) year periods ("Renewal Term").

### **B. Termination**

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.

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 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. 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.

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. 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 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. 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 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 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.**

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.

#### **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 Contactor will notice of the provisions stated below, which if applicable, the Contractor shall comply with all requirements associated therewith.

### **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.

### **EQUAL OPPORTUNITY CLAUSE PURSUANT TO 41 CFR CHAPTER 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.

#### **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"). 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.



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.

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

Pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL 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) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **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.

#### **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.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

A. 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: Mitch Fleury

As to the Contractor:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_, Florida \_\_\_\_\_  
Attn: \_\_\_\_\_

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

C. 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.

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

E. 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.

F. 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.

G. 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.

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

I. 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.

J. 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.

K. 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.

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

M. 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.

N. 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.

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

P. 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.

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

OWNER: Village of Wellington

CONTRACTOR \_\_\_\_\_

By \_\_\_\_\_  
, Mayor

By \_\_\_\_\_

Attest: \_\_\_\_\_  
Awilda Rodriguez, Wellington Clerk  
(SEAL)

Attest: \_\_\_\_\_  
(CORPORATE SEAL)

Address for giving notices  
**12300 Forest Hill Boulevard**  
**Wellington, Florida 33414**

Address for giving notices  
\_\_\_\_\_  
\_\_\_\_\_

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.)