

DRC EMERGENCY SERVICES

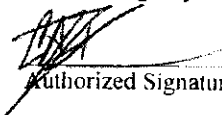
740 Museum Drive • Mobile, Alabama 36608
1-888-721-4372 • 1-251-343-3581 • FAX 1-251-343-5554

The City of Dania Beach, herein represented by its duly authorized officer, has a desire to enter into a Cooperative Purchase Agreement for Disaster Response & Recovery Services, under the same terms and conditions as the agreement between DRC Emergency Services, LLC and the Monroe County, dated June 20, 2012 (attached hereto as Exhibit A) which contract resulted from a competitive RFP. The City of Dania Beach has reviewed the contract and agrees to the terms and conditions and further agrees to the fairness and reasonableness of the pricing. DRC Emergency Services, LLC hereby agrees to provide such services to the City of Dania Beach under the same price(s), terms, and conditions as the referenced contract between DRC Emergency Services, LLC and Monroe County.

All references in the contract between DRC Emergency Services, LLC and Monroe County, shall be assumed to pertain to, and are binding upon DRC Emergency Services, LLC and the City of Dania Beach. Except as provided below, this agreement is entered into at no cost to the City of Dania Beach. The only costs associated with this contract are the agreed upon terms which only become active upon the City of Dania Beach issuing a notice to proceed to DRC Emergency Services, LLC.

Agreed, accepted and consented to this, the last date shown hereunder.

DRC Emergency Services, LLC


Authorized Signature

Name: Cary A Des Roches

Title: Secretary/Treasurer

Date: May 9, 2013

City of Dania Beach

Authorized Signature

Name: _____

Title: _____

Date: _____

Exhibit A



740 Museum Drive • Mobile, Alabama 36608
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Stand-By
Contract Summary Form

Agency Monroe County
Florida

Contract # DRCES 12-027

Issue Date: 6/20/2012

Expiry: 6/19/2017

*CPA: RFP Disaster Response & Recovery Services.

Renewal Terms: may extend in one year increments for up to five (5) additional years.

Extensions: _____

Revisions: _____

Amendments: _____

Note: _____

AGREEMENT FOR

DISASTER RESPONSE AND RECOVERY SERVICES

This Agreement ("Agreement") made and entered into this 20th day of June, 2012 by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida, 33040, its successors and assigns, hereinafter referred to as "COUNTY," through the Monroe County Board of County Commissioners ("BOCC"),

AND

DRC Emergency Services, LLC, a Limited Liability Company of the State of Alabama, whose address is **740 Museum Drive, Mobile, Alabama 36608**, its successors and assigns, hereinafter referred to as "CONTRACTOR",

WITNESSETH:

WHEREAS, COUNTY desires to employ the professional services of CONTRACTOR for Disaster Response and Recovery Services; and

WHEREAS, CONTRACTOR has agreed to provide professional services which shall include but not be limited to providing Disaster Response and Recovery Services, which services shall collectively be referred to as the "Project";

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

FORM OF AGREEMENT

ARTICLE 1

1.1 REPRESENTATIONS AND WARRANTIES

By executing this Agreement, CONTRACTOR makes the following express representations and warranties to the COUNTY:

- 1.1.1 The CONTRACTOR shall maintain all necessary licenses, permits or other authorizations necessary to act as CONTRACTOR for the Project until the CONTRACTOR'S duties hereunder have been fully satisfied;
- 1.1.2 The CONTRACTOR has become familiar with the Project site and the local conditions under which the work is to be completed.
- 1.1.3 The CONTRACTOR shall prepare all documentation required by this Agreement in such a manner that they shall be accurate, coordinated and adequate for use in verifying work completed by debris contractors and associated costs and shall be in conformity and comply with all applicable law, codes and regulations. The CONTRACTOR warrants that

the documents prepared as a part of this Agreement will be adequate and sufficient to document costs in a manner that is acceptable for reimbursement by government agencies, therefore eliminating any additional cost due to missing or incorrect information;

- 1.1.4 The CONTRACTOR assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.
- 1.1.5 The CONTRACTOR'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In providing all services pursuant to this agreement, the CONTRACTOR shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the CONTRACTOR.
- 1.1.6 At all times and for all purposes under this agreement the CONTRACTOR is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the CONTRACTOR or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.
- 1.1.7 The CONTRACTOR shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.
- 1.1.8 The effective date of this AGREEMENT shall be **June 20, 2012**. The term of the AGREEMENT shall be for a **five year period**, unless otherwise terminated as provided herein. The COUNTY shall have the option of extending the AGREEMENT in one year increments for up to five additional years at the same terms and conditions with approval of the COUNTY'S governing board. Such extension(s) shall be in the form of a written Amendment to the AGREEMENT and shall be executed by both parties.

ARTICLE II

SCOPE OF BASIC SERVICES

2.1 DEFINITION

CONTRACTOR'S Scope of Basic Services consists of those described in **Attachment A**. The CONTRACTOR shall commence work on the services provided for in this Agreement promptly upon his receipt of a written notice to proceed from the COUNTY. The notice to proceed will be in the form of a task order and must contain a description of the services to be performed, and the time within which services must be performed.

2.2 CORRECTION OF ERRORS, OMISSIONS, DEFICIENCIES

The CONTRACTOR shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the CONTRACTOR or its subcontractors, or both.

2.3 NOTICE REQUIREMENT

All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONTRACTOR. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage pre-paid, to the COUNTY by certified mail, return receipt requested, to the following:

Mr. Kevin Wilson, P.E.
Monroe County Public Works Engineering Division
1100 Simonton Street
Key West, Florida 33040

And: Mr. Roman Gastesi, Jr.
Monroe County Administrator
1100 Simonton Street, Room 2-205
Key West, Florida 33040

For the CONTRACTOR:

DRC Emergency Services, LLC
Robert J. Psakson
740 Museum Drive
Mobile, AL 36608

ARTICLE III

ADDITIONAL SERVICES

- 3.1 The services described in Article III that may be provided by the CONTRACTOR (provided for example purposes only) and are not included in Basic Services. If requested by the COUNTY they shall be paid for as an addition to the compensation paid for the Basic Services but only if approved by the COUNTY before commencement.
- A. Providing services of CONTRACTOR for other than the previously listed scope of the Project provided as a part of Basic Services.
 - B. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted debris recovery operations.
 - B. Providing representation before public bodies in connection with the Project, upon approval by COUNTY.
- 3.2 If Additional Services are required, such as those listed above, the COUNTY shall issue a letter requesting and describing the requested services to the CONTRACTOR. The CONTRACTOR shall respond with a fee proposal to perform the requested services. Only after receiving an amendment to the Agreement and a notice to proceed from the COUNTY, shall the CONTRACTOR proceed with the Additional Services.

ARTICLE IV
COUNTY'S RESPONSIBILITIES

- 4.1 The COUNTY shall provide full information regarding requirements for the Project including physical location of work, county maintained roads, maps.
- 4.2 The COUNTY shall designate a representative to act on the COUNTY's behalf with respect to the Project. The COUNTY or its representative shall render decisions in a timely manner pertaining to documents submitted by the CONTRACTOR in order to avoid unreasonable delay in the orderly and sequential progress of the CONTRACTOR'S services.
- 4.3 Prompt written notice shall be given by the COUNTY and its representative to the CONTRACTOR if they become aware of any fault or defect in the Project or non-conformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.
- 4.4 The COUNTY shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CONTRACTOR'S services and work of the contractors.
- 4.5 The COUNTY's review of any documents prepared by the CONTRACTOR or its subcontractors shall be solely for the purpose of determining whether such documents are generally consistent with the COUNTY's criteria, as, and if, modified. No review of such documents shall relieve the CONTRACTOR of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.
- 4.6 The COUNTY shall provide copies of necessary documents required to complete the work.
- 4.7 Any information that may be of assistance to the CONTRACTOR that the COUNTY has immediate access to will be provided as requested.

ARTICLE V
INDEMNIFICATION AND HOLD HARMLESS

The CONTRACTOR covenants and agrees to indemnify, hold harmless and defend COUNTY, its commissioners, officers, employees, agents and servants from any and all claims for bodily injury, including death, personal injury, and property damage, including damage to property owned by Monroe County, and any other losses, damages, and expenses of any kind, including attorney's fees, court costs and expenses, which arise out of, in connection with, or by reason of services provided by CONTRACTOR or its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the CONTRACTOR, its Subcontractor(s) in any tier, their officers, employees, servants and agents.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify COUNTY from any and all increased expenses resulting from such delay. Should any claims be asserted against COUNTY by virtue of any deficiency or ambiguity in the plans and specifications provided by the CONTRACTOR, the CONTRACTOR agrees and warrants that CONTRACTOR hold the County harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the COUNTY's behalf.

The first ten dollars (\$10.00) of remuneration paid to the CONTRACTOR is consideration for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

This indemnification shall survive the expiration or earlier termination of the Agreement.

ARTICLE VI PERSONNEL

6.1 PERSONNEL

The CONTRACTOR shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:

NAME	FUNCTION
<u>Mark Hafford</u>	<u>A.O.O.</u>
<u>Ron Babize</u>	<u>P.M.</u>
<u>Jason Babize</u>	<u>Supervisor</u>
<u>Jim Kelley</u>	<u>Supervisor</u>
<u>Bruce Persons</u>	<u>P.O.</u>

So long as the individuals named above remain actively employed or retained by the CONTRACTOR, they shall perform the functions indicated next to their names. If they are replaced the CONTRACTOR shall notify the COUNTY of the change immediately.

ARTICLE VII COMPENSATION

7.1 PAYMENT SUM

7.1.1 The COUNTY shall pay the CONTRACTOR in current funds for the CONTRACTOR'S performance of this Agreement based on rates negotiated and agreed upon and shown in Attachment A.

7.2 PAYMENTS

7.2.1 For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONTRACTOR shall be paid monthly.

(A) If the CONTRACTOR'S duties, obligations and responsibilities are materially changed by amendment to this Agreement after execution of this Agreement, compensation due to the CONTRACTOR shall be equitably adjusted, either upward or downward;

(B) As a condition precedent for any payment due under this Agreement, the CONTRACTOR shall submit monthly, unless otherwise agreed in writing by the

COUNTY, a proper invoice to COUNTY requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONTRACTOR'S invoice shall describe with reasonable particularity the service rendered. The CONTRACTOR'S invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought at the COUNTY may require.

- (C) Payment shall be made pursuant to the Local Government Prompt Payment Act, 218.735, Florida Statute.

7.3 REIMBURSABLE EXPENSES

Rates shall be inclusive of all reimbursable expenses.

7.4 BUDGET

- 7.4.1** The CONTRACTOR may not be entitled to receive, and the COUNTY is not obligated to pay, any fees or expenses in excess of the amount budgeted for this contract in each fiscal year (October 1 - September 30) by COUNTY's Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the COUNTY's Board of County Commissioners.
- 7.4.2** The COUNTY's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of contract initiation and its duration.

ARTICLE VIII **INSURANCE**

8.1 The CONTRACTOR shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONTRACTOR'S failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the COUNTY from any and all increased expenses resulting from such delay.

8.2 The coverage provided herein shall be provided by an insurer with an A.M. Best rating of VI or better, that is licensed to business in the State of Florida and that has an agent for service of process within the State of Florida. The coverage shall contain an endorsement providing sixty (60) days' notice to the COUNTY prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY.

8.3 CONTRACTOR shall obtain and maintain the following policies:

- A. Workers' Compensation insurance as required by the State of Florida, sufficient to respond to Florida Statute 440.
- B. Employers Liability Insurance with limits of \$1,000,000 per Accident, \$1,000,000 Disease, policy limits, \$1,000,000 Disease each employee.
- C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-

owned vehicles, with One Million Dollars (\$1,000,000.00) combined single limit and One Million Dollars (\$1,000,000.00) annual aggregate.

- D. Commercial general liability, including Personal Injury Liability, covering claims for injuries to members of the public or damage to property of others arising out of any covered act or omission of the CONTRACTOR or any of its employees, agents or subcontractors or subcontractors, including Premises and/or Operations, Products and Completed Operations, Independent Contractors; Broad Form Property Damage and a Blanket Contractual Liability Endorsement with One Million Dollars (\$1,000,000) per occurrence and annual aggregate.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported must extend for a minimum of 48 months following the termination or expiration of this contract.

- E. Pollution Liability insurance of Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) annual aggregate. If the policy is a "claims made" policy, CONTRACTOR shall maintain coverage or purchase a "tail" to cover claims made after completion of the project to cover the statutory time limits in Chapter 95 of the Florida Statutes.
- F. COUNTY shall be named as an additional insured with respect to CONTRACTOR'S liabilities hereunder in insurance coverages identified in Paragraphs C and D.
- G. CONTRACTOR shall require its subcontractors to be adequately insured at least to the limits prescribed above, and to any increased limits of CONTRACTOR if so required by COUNTY during the term of this Agreement. COUNTY will not pay for increased limits of insurance for subcontractors.
- H. CONTRACTOR shall provide to the COUNTY certificates of insurance or a copy of all insurance policies including those naming the COUNTY as an additional insured. The COUNTY reserves the right to require a certified copy of such policies upon request.
- I. If the CONTRACTOR participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONTRACTOR may be required to submit updated financial statements from the fund upon request from the COUNTY.

ARTICLE IX **MISCELLANEOUS**

9.1 SECTION HEADINGS

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

9.2 OWNERSHIP OF THE PROJECT DOCUMENTS

The documents prepared by the CONTRACTOR for this Project belong to the COUNTY and may be reproduced and copied without acknowledgement or permission of the CONTRACTOR.

9.3 SUCCESSORS AND ASSIGNS

The CONTRACTOR shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and the CONTRACTOR, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

9.4 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

9.5 TERMINATION

A. In the event that the CONTRACTOR shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this agreement after five days written notification to the CONTRACTOR.

B. Either of the parties hereto may cancel this Agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.

9.6 CONTRACT DOCUMENTS

This contract consists of the Proposal Statement, any addenda, the Form of Agreement (Articles I-IX), the CONTRACTOR'S response to the RFP, the documents referred to in the Form of Agreement as a part of this Agreement, and attachments A, B and C, and modifications made after execution by written amendment. In the event of any conflict between any of the Contract documents, the one imposing the greater burden on the CONTRACTOR will control.

9.7 PUBLIC ENTITIES CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on contracts 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, subcontractor, or CONTRACTOR under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

By signing this Agreement, CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it or any subcontractor has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

CONTRACTOR will promptly notify the COUNTY if it or any subcontractor or CONTRACTOR is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

9.8 MAINTENANCE OF RECORDS

CONTRACTOR shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of five years from the termination of this agreement. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONTRACTOR pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONTRACTOR, the CONTRACTOR shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the COUNTY.

9.9 GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, COUNTY and CONTRACTOR agree that venue shall lie in the 16th Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body. This agreement shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

9.10 SEVERABILITY

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants,

conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CONTRACTOR agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9.11 ATTORNEY'S FEES AND COSTS

The COUNTY and CONTRACTOR agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, as an award against the non-prevailing party, and shall include attorney's fees and courts costs in appellate proceedings.

9.12 BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONTRACTOR and their respective legal representatives, successors, and assigns.

9.13 AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

9.14 CLAIMS FOR FEDERAL OR STATE AID

CONTRACTOR and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

9.15 ADJUDICATION OF DISPUTES OR DISAGREEMENTS

COUNTY and CONTRACTOR agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

9.16 COOPERATION

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CONTRACTOR agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CONTRACTOR specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.17 NONDISCRIMINATION

CONTRACTOR and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONTRACTOR or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

9.18 COVENANT OF NO INTEREST

CONTRACTOR and COUNTY covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.19 CODE OF ETHICS

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

9.20 NO SOLICITATION/PAYMENT

The CONTRACTOR and COUNTY warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or

resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONTRACTOR agrees that the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

9.21 PUBLIC ACCESS.

The CONTRACTOR and COUNTY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONTRACTOR and COUNTY in connection with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CONTRACTOR.

9.22 NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONTRACTOR and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

9.23 PRIVILEGES AND IMMUNITIES

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the COUNTY, except to the extent permitted by the Florida constitution, state statute, and case law.

9.25 NON-RELIANCE BY NON-PARTIES

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CONTRACTOR and the COUNTY agree that neither the CONTRACTOR nor the COUNTY or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any

particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION

CONTRACTOR agrees to execute such documents as COUNTY may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONTRACTOR shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made within one year following the end of the Agreement.

9.27 NO PERSONAL LIABILITY

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

9.28 EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.29 FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

The following forms and provisions are incorporated in and made a part of this contract.

9.29.1 Davis-Bacon Act - In accordance with the Davis-Bacon Act, the CONTRACTOR or their subcontractors shall pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The current prevailing wage rates can be found at: www.access.gpo.gov/davisbacon/fl.html under Monroe County.

9.29.2 Americans with Disabilities Act of 1990 (ADA) - The CONTRACTOR will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and the assurance by the CONTRACTOR pursuant thereto.

9.29.3 Disadvantaged Business Enterprise (DBE) Policy and Obligation - It is the policy of the COUNTY that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its CONTRACTOR agree to ensure that DBE's have the opportunity to participate in the

performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The COUNTY and the CONTRACTOR and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

9.29.4 Convict Labor - The convict labor prohibition in 23 U.S.C. 114 applies to emergency repair projects. Convict labor cannot be used in emergency repair construction projects.

9.29.5 FHWA Form 1273 is attached hereto as **Attachment B** and made a part of this Agreement.

9.29.6 The requirements of 23 CFR Part 635.410 Buy America Requirements are attached hereto as **Attachment C** and made a part of this Agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Danny L. Kolhage*
Deputy Clerk

By: *[Signature]*
Mayor/Chairman

Date: June 20, 2012

(Seal)

Attest:

By: *[Signature]*

Title: Contracts Manager

Date: 5/31/2012

DRC Emergency Services, LLC

By: *[Signature]*

Title: Managing Director

Date: 5/29/2012

END OF AGREEMENT

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Christine M. Limbert-Barrows
CHRISTINE M. LIMBERT-BARROWS
ASSISTANT COUNTY ATTORNEY
Date 6/25/12

ATTACHMENT A
SCOPE OF WORK AND PRICING

In the event of a disaster, upon Notice to Proceed from the COUNTY, the CONTRACTOR shall be responsible for providing emergency debris clearance (PUSH), Debris Recovery (loading and hauling of disaster related debris), management of Temporary Debris Storage and Reduction sites (TDSR), and tree stump and limb removal. All disaster response and recovery services shall be performed in compliance with FEMA and FHWA guidelines. Documentation and reports of work performed shall be in a form suitable for FEMA reimbursement.

These tasks may include, but are not limited to:

A. Emergency Debris Clearing from County Rights of Way and Facilities

- Immediately after a disaster, provide all necessary equipment, tools and personnel to clear primary roads and critical government facilities of debris to allow emergency vehicles access to areas in need of assistance as directed by the County.
- Debris should be stacked along the edge of pavement on the shoulder of the road and not blocking driveways, side streets or utilities of any kind.
- Emergency Debris Removal may require loading the debris, hauling the debris to an approved dumpsite, and dumping the debris at the approved dumpsite.
- Provide daily reporting to include cumulative, daily, and hourly statistics detailing type of equipment and personnel used

Pricing for Emergency Debris Clearing equipment shall be at the hourly rates detailed as follows (equipment operator included):

Equipment Type	Hourly Equipment Rate
Bobcat Loader	\$85.00
Bucket Truck w/Operator	\$115.00
Crash Truck w/Impact Attenuator	\$45.00
Dozer, Tracked, D5 or similar	\$110.00
Dozer, Tracked, D6 or similar	\$120.00
Dozer, Tracked, D7 or similar	\$130.00
Dozer, Tracked, D8 or similar	\$140.00
Dump Truck, 18 CY-25 CY	\$40.00
Dump Truck, 25 CY-35 CY	\$50.00
Dump Truck, 35 CY-45 CY	\$60.00
Dump Truck, 50 CY or larger	\$70.00
Generator and Lighting	\$10.00
Grader w/12' Blade	\$110.00
Hydraulic Excavator, 1.5 CY	\$125.00
Hydraulic Excavator, 2.5 CY	\$135.00
Knuckleboom Loader	\$110.00
Equipment Transport	\$90.00
Mobile Crane (Adequate for hanging limbs/leaning trees)	\$125.00

Pickup Truck, .5 Ton	\$20.00
Truck, Flatbed	\$35.00
Water Truck	\$50.00
Wheel Loader, 2.5 CY, 950 or similar	\$175.00
Wheel Loader, 3.5 – 4.0 CY, 966 or similar	\$185.00
Wheel Loader, 4.5 CY, 980 or similar	\$195.00
Wheel Loader-Backhoe, 1.0 – 1.5 CY	\$75.00
Track Hoe, John Deere 690 or similar	\$150.00
Stump Grinder	\$75.00
30 ton or larger Crane	\$110.00

Labor rates for emergency debris clearing and other work directed by COUNTY which require hourly billing shall be invoiced as follows:

Labor Category	Hourly Labor Rate
Operations Manager w/Cell Phone and Pickup	\$50.00
Crew Foreman w/Cell Phone and Pickup	\$60.00
Tree Climber/Chainsaw	\$95.00
Laborer w/Chain Saw	\$38.00
Laborer w/small tools, traffic control, flag person	\$38.00

B. Debris Recovery and Disposal (Load and Haul) from County Roads and Facilities

- Provide all necessary equipment and personnel to load and haul disaster-generated debris to an approved TDSR site.
- Disaster-related debris will be sorted into categories: clean vegetative, non-vegetative, seaweed, white goods, household hazardous waste, mixed and ineligible at the load sites.
- All debris shall be mechanically loaded and reasonably compacted.
- Provide control of pedestrian and vehicular traffic in the work area; include flag persons, signs or other devices necessary to ensure safe debris recovery operations.
- Provide daily reports on all debris recovery operations; include all equipment and personnel used. The report shall detail daily and cumulative-to-date statistics on the number of truckloads, number of cubic yards of debris hauled, locations of completed work, and locations of current work for each type of debris recovered.
- Identify landfills and/or other final disposal site(s) for all debris.
- Haul debris from TDSR sites to final disposal site(s).
- Immediately investigate claims of damage to private property and/or County roads and rights-of-way due to debris operations and ensure proper repairs are made promptly at no cost to the County.
- Provide all necessary equipment and personnel to remove seaweed and other debris from beach sand by screening and return clean sand to beach as directed by the County.

Unit Costs associated with collection and hauling of debris from County rights of way to TDSRs are on a per cubic yard (CYD) basis. Rates are inclusive of all costs and shall be invoiced at the following rates:

Description	Unit	Unit Price
Collect and Haul Vegetative Debris		
0 -15 mi	CYD	\$6.62
15.1 - 30 mi	CYD	\$6.62
> 30 mi	CYD	\$6.62
Collect and Haul Non-Vegetative (C&D) Debris		
0 - 15 mi.	CYD	\$7.22
15.1 - 30 mi	CYD	\$7.22
> 30 mi	CYD	\$7.22
Collect and Haul White Goods		
0-15 mi	CYD	\$75.00
15.1 - 30 mi	CYD	\$75.00
> 30 mi	CYD	\$75.00
Collect and Haul Household Hazardous Waste		
0 -15 mi	CYD	\$34.95
15.1 - 30 mi	CYD	\$34.95
> 30 mi	CYD	\$34.95
Collect and Haul Seaweed		
0 -15 mi	CYD	\$9.42
15.1 - 30 mi	CYD	\$9.42
> 30 mi	CYD	\$9.42

Disposal of animal carcasses shall be **\$35.00 per unit**.

C. Management of Temporary Debris Storage and Reduction (TDSR) Sites

- Provide sufficient personnel and equipment to operate multiple TDSR sites simultaneously within unincorporated Monroe County
- Fully document pre-existing conditions at proposed TDSR sites with photographs and appropriate environmental sampling.
- Prepare each approved TDSR site to accept debris, to include clearing, erosion control, grading, construction and maintenance of haul roads and entrances and installation of inspection towers and security fencing
- Establish site layout, including entrance, exit and internal haul roads at each TDSR site
- Provide all management, supervision, labor, machines, tools, and equipment necessary to accept, process, reduce, sort, and dispose of disaster related debris.
- Provide at least one inspection tower at each TDSR site constructed to pre-approved county specifications.
- Vegetative Debris reduction shall be performed by chipping / grinding only
- Ensure all debris is properly staged and sorted.
- Provide daily and cumulative-to-date reports for each TDSR site.

- Ensure TDSR sites are secure and not accessible by the public during operation and after working hours.
- After all debris has been reduced and hauled to final disposal sites, perform site restoration and closeout; include removal of site equipment (temporary toilets, inspection towers, security fence, etc) and restore the site to pre-work conditions.

Costs related to testing to establish TDSR site initial conditions, site mobilization and site restoration shall be invoiced at CONTRACTOR cost with no mark-up.

Unit costs for TDSR site management and debris reduction are on a per cubic yard basis. Costs are inclusive of all work required to manage and reduce debris, except as noted above, (freon removal from white goods is a separate, per unit cost), and shall be invoiced as follows:

Description	Unit	Unit Price
Debris Site Management		
vegetative	CYD	\$1.92
non-vegetative	CYD	\$0.82
white goods	CYD	\$0.40
household hazardous waste	CYD	\$0.50
seaweed	CYD	\$0.50

Freon removal from white goods shall be invoiced at **\$58.00 per unit** from which Freon is removed; the price for Freon removal includes transport and disposal of Freon at an approved disposal site.

Price for Haul out of reduced debris to Final Disposal sites shall be inclusive of all costs and shall be invoiced on a per cubic yard basis as follows:

Description	Unit	Unit Price
Haul out to Final Disposal		
0 - 60 mi	CYD	\$2.50
61 - 100 mi	CYD	\$5.86
101 - 130 mi	CYD	\$7.42
greater than 130 mi	CYD	\$7.42

D. Contractor will identify final disposal locations for all debris classes. Cost associated with landfill tipping fees will be a pass through cost; the CONTRACTOR will invoice the COUNTY at actual cost, without any additional fees. Wherever possible, recycling, or other approved re-use facilities (ie. for metals) will be identified in order to reduce disposal costs.

E. Beach Sand Screening and Replacement

Provide all necessary equipment and personnel to screen all sand to remove debris deposited by an event. This task includes the pick-up of debris laden sand, hauling debris laden sand to the processing screen located on or near the beach, processing the debris laden sand and returning the clean sand to the approximate original location on the beach as directed by the COUNTY. Debris removed from the sand will be picked up,

hauled and processed based on the scope of work and unit prices for debris removal from COUNTY rights of way.

The cost associated with collection, screening and returning sand to the beach shall be invoiced at **\$8.98 per cubic yard**.

- F. As directed by the County, the CONTRACTOR will provide labor, equipment and materials to clear vegetative debris from private property, and demolish and remove non-vegetative debris from private property. Work may include trimming limbs and trees that present a hazard, clearing debris from private property and hauling it to the closest public right of way.

Work will not proceed until appropriate rights of entry forms and hold harmless agreements are obtained.

The following rates apply for right of entry work:

Vegetative debris: **\$14.68 per cubic yard**

Demolish and Remove non-vegetative debris from private property: **\$19.83 per cubic yard**.

G. **Tree and Limb Removal**

- Provide all equipment, tools and personnel to safely remove hazardous leaning trees or hanging tree limbs, as directed by Monroe County.
- Provide control of pedestrian and vehicular traffic in the work area, to include flag persons, signs or other devices necessary to ensure safe tree/limb removal operations
- Ensure that strict Right-of-Entry procedures are followed for any hazardous tree or limb removal operations that affect private property.
- As directed by the County, remove all hazardous tree stumps, both uprooted and intact.

The cost of tree and limb removal shall be invoiced at the hourly rates for equipment and labor. Tree stump removal shall be invoiced as follows:

Tree Stump Removal	Unit	Unit Price
Greater than 12" but Less than 24" in Diameter	Per Stump	\$200.00
Greater than 24" but Less than 48" in Diameter	Per Stump	\$300.00
48" and Greater in Diameter	Per Stump	\$400.00

H. **Logistical and Recovery Operation Services**

- General procurement and logistics from tents to meals ready to eat (MRE): all emergency and support items purchased, warehoused, and delivered;
- Provide temporary housing, restroom, shower and laundry facilities for emergency workers including related supplies, service, and maintenance of facilities.
- Provide and install temporary offices, mobile command centers, accommodations and support;

- Provide emergency generator services with licensed electrician support to specified facilities including hauling, installing, servicing and removal of generators.
- Provide ice, water and fuel delivery and distribution services to specified facilities.
- Provide hazardous waste recovery, disposal and remediation in flooded environments, including canals. Services will include permitting, testing and related services.
- Provide emergency communications services;
- Recovery and destruction of dead fish, animals and livestock
- Provide emergency clinics and support personnel.

The CONTRACTOR shall supply Logistical and Recovery Services as directed by the COUNTY, during the emergency event. Invoicing for Logistical and Recovery Services and equipment shall be invoiced as follows:

- 1) All logistical needs and emergency support items will be purchased, warehoused and delivered as required by the County. All items shall be billed at actual cost plus 18%
- 2) Temporary housing, including restrooms, showers and laundry facilities will be provided as requested by the County. They shall be billed at \$362.00 per man per day, with a 14 day minimum
- 3) Temporary Offices will be billed at a Day rate of \$1750.00. They will be 8' X 40'. A mobile command center can be provided at a rate of \$1,900.00 per day. All necessary support included. Accommodations provided as per Item # 2
- 4) All necessary generators will be provided under the same terms as Item #1
- 5) Ice, water, and fuel delivery and distribution services will be provided under the same terms as Item #1
- 6) Hazardous Waste recovery and disposal will be billed from the schedule below

Canal silt removal and disposal

Marine based removal:

0-5 mile one way haul	\$ 28.00 per cubic yard
5.1-10 mile one way haul	\$ 29.00 per cubic yard
10.1-15 mile one way haul	\$ 60.00 per cubic yard

Land based removal:

0-5 mile one way haul	\$ 25.00 per cubic yard
5.1-10 mile one way haul	\$ 26.00 per cubic yard
10.1-15 mile one way haul	\$ 27.00 per cubic yard

Drainage ditches silt and debris removal

Ditch width 0-4.0 feet	\$ 5.86 per linear foot
Ditch width 4.1-8 feet	\$ 6.86 per linear foot
Ditch width 8.1-12 feet	\$ 8.86 per linear foot
Ditch width 12.1-16 feet	\$ 14.86 per linear foot

Ditch width 16.1-20 feet	\$ 18.86 per linear foot
Ditch width 20.1-30 feet	\$ 24.68 per linear foot

Debris to be placed on the ROW for collection as regular debris.
Silt to be hauled and disposed of at \$15.00 per cubic yard

Cleaning and clearing of storm drain lines

Drain Line Diameter 0-15.0 inches	\$ 8.50 per linear foot
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Drain Line Diameter 15.01-36 inches	\$ 10.50 per linear foot
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Debris to be placed on the ROW for collection as regular debris.
Silt to be hauled and disposed of at \$15.00 per cubic yard

Cleaning and clearing of catch basins and inlets

4' X 4'	\$ 200.00 each
8' X 8'	\$ 250.00 each
10' X 10'	\$ 300.00 each
20' X 20'	\$ 400.00 each

Marine Debris Removal

Price proposal for removal of debris from a marine environment, using either land or marine based equipment.

1. Vegetative Debris

Land Based:	\$ 22.68 cubic yard
Marine Based:	\$ 58.62 cubic yard

1. C & D and Mixed Debris

Land Based:	\$ 26.68 cubic yard
Marine Based:	\$ 62.48 cubic yard

Derelict vehicle and vessel removal (from land)

Pricing proposal for vehicle and vessel recovery:

1. Transfer/Tow of typical passenger car: \$ 279.00 ea
2. Transfer/Tow and handling of Recreational vessels up to 24' in length
 - a. Flat & V- Hulled Vessels 80.00per linear foot
 - b. Keeled Vessels 150.00per linear foot
3. Transfer/Tow and handling of Recreational vessels 25' up to 35' in length
 - a. Flat & V- Hulled Vessels 145.00per linear foot
 - b. Keeled Vessels 290.00per linear foot

4. Transfer/Tow and handling of
Recreational vessels 36' up to 48' in length

a. Flat & V- Hulled Vessels	195.00per linear foot
b. Keeled Vessels	325.00per linear foot

6. Transfer/Tow and handling or
Recreational vessels above 48' in length

a. Flat & V- Hulled Vessels	295.00per linear foot
b. Keeled Vessels	350.00per linear foot

Operation of secure aggregation site for vessels:

\$ 7,450.00 per day

Remediation can involve a wide array of materials, manpower and supplies. DRC and its network of subcontractors has the ability to perform any type of remediation which may be required. Due to the unknown nature of this remediation, all needed services shall be identified and the rates negotiated at a fair and reasonable cost to the County.

ATTACHMENT B
FHWA Form 1273

Required Contract Provisions Federal-Aid Construction Contracts

FHWA-1273 Electronic Version – March 10, 1994

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Attachments

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I. GENERAL

1. 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.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

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 and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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 State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his 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, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO 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 minority group employees.
 - 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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have

the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group 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 his 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 his avenues of appeal.
6. **Training and Promotion:**
 - a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - 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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - 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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - b. The contractor will use best 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 SHA 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 minority and women 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 minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.
8. **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.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful

minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 1. The number 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;
 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color,

religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

- a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.
- b. 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.

- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 2. the additional classification is utilized in the area by the construction industry;
 3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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. Said 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.

- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

- a. Apprentices:
 1. 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
 2. The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate)

specified in the contractor's or subcontractor's registered program shall be observed.

3. 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 journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

1. 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 DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.
3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **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.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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 SHA contracting officer 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.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the

labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - 1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - 2. that such 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 the Regulations, 29 CFR 3;
 - 3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. 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 2d of this Section V.

- a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.
 - 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 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 VII 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 SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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 SHA 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. 333).

- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

- 1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
- 2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

- 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 State. 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).