

TOWN OF SURFSIDE
REQUEST FOR PROPOSALS (RFP)



RFP No. 2020-07

**COMPREHENSIVE LANDSCAPE MAINTENANCE AND
RELATED SERVICES**

The Town of Surfside Commission:

Mayor Charles W. Burkett
Vice Mayor Tina Paul
Commissioner Charles Kesl
Commissioner Elianna Salzhauer
Commissioner Nelly Velasquez

Town of Surfside
9293 Harding Ave
Surfside, Florida 33154

ISSUE DATE: WEDNESDAY, AUGUST 26, 2020
PROPOSAL OPENING DATE: THURSDAY, OCTOBER 1, 2020
PROPOSAL OPENING TIME: 2:00 P.M.



PUBLIC NOTICE

REQUEST FOR PROPOSALS (RFP) No. 2020-07

COMPREHENSIVE LANDSCAPE MAINTENANCE AND RELATED SERVICES

NOTICE IS HEREBY GIVEN that the Town of Surfside (“Town”) is soliciting proposals for Comprehensive Landscape Maintenance and Related Services in Surfside, Florida. Interested firm/individuals (“Proposer(s)”) may pick-up a copy of the Request for Proposals (“RFP”) No. 2020-07 from the Town Clerk’s Office, Town Hall, 9293 Harding Avenue, Second Floor, Surfside, Florida, 33154, or may download it from the Town’s website at www.townofsurfside.fl.gov. The RFP contains detailed and specific information about the scope of services, submission requirements, and evaluation and selection procedures.

One (1) original, five (5) hard copies, and one (1) electronic copy on a USB drive of the completed and executed qualifications must be delivered no later than **Thursday, October 1, 2020 at 2:00 PM** (“Submission Deadline”), to the following address:

**Town of Surfside Town Hall
Town Clerk’s Office
9293 Harding Avenue
Surfside, Florida, 33154.**

The Town reserves the right to reject late submissions, in the sole discretion of the Town Manager or his designee.

The envelope containing the sealed Proposal must be clearly marked as follows:

**“SEALED PROPOSAL
RFP NO. 2020-07
COMPREHENSIVE LANDSCAPE MAINTENANCE AND RELATED SERVICES**

OPENING DATE AND TIME/SUBMISSION DEADLINE: October 1, 2020 at 2:00 PM

A **Pre-Proposal Submission Conference** is scheduled for **Tuesday, September 15, 2020 at 11:00 AM** via Zoom. All Proposers planning to submit qualifications are encouraged to attend this

meeting. Virtual participation by zoom meeting may be available and will be noticed by the Town Clerk.

All persons attending the pre-submission conference may ask questions or seek clarification regarding this RFP via the procedures outlined below. Any questions or clarifications concerning the proposal specifications must be received by Sandra McCready, M.M.C. Town Clerk, no later than **5:00 PM, Friday, September 18, 2020**. Any questions regarding RFP No. 2020-07 are to be submitted either in writing directly to Sandra McCready, Town Clerk, at the following address: 9293 Harding Ave., Second Floor, Surfside, Florida 33154, or via email to: smccready@townofsurfsidefl.gov. Any questions received by the Clerk after the stated deadline will be disregarded. All questions received by the Clerk prior to the stated deadline shall be answered via an Addendum to this RFP and circulated to all registered Proposers.

The Town intends to enter into agreement(s) with one or more qualified and successful Proposers to provide the Services.

The Town reserves the right to cancel this solicitation, award any or all of the services requested, reject any or all submissions, with or without cause, to waive technical errors and informalities, and to accept any proposal from a proposer which is qualified and best serves the interests of or represents the best value to the Town.

The Town hereby provides notice to all proposers of the imposition of a Cone of Silence for this solicitation, as set forth in Section 3-17 of the Town Code. "Cone of Silence," as used herein, means a prohibition on communication regarding a competitive bid or solicitation for a purchase exceeding \$25,000.00, including but not limited to, a particular request for qualifications ("RFP") between (1) A potential respondent, vendor, service provider, proposer, bidder, lobbyist, or consultant, and (2) Town commissioners, Town's staff including, but not limited to, the Town Manager and his or her staff, and any member of the Town's selection or evaluation committee. Please contact the Town Clerk and/or Town Attorney with any questions on the Cone of Silence.

Date Issued: Wednesday, August 26, 2020

REQUEST FOR PROPOSALS
RFP NO. 2020-07
COMPREHENSIVE LANDSCAPE MAINTENANCE
AND RELATED SERVICES

GENERAL INFORMATION

A. SCOPE OF SERVICES:

The Town of Surfside, Florida, (Town) is requesting sealed Proposals from qualified firms to provide Comprehensive Landscape Maintenance and Related Services (the “Services” or “Project”). The Services consist of comprehensive and regular landscape maintenance and related services, including but not limited to, mowing, weeding, edging, trimming, pruning, mulching, fertilizing and pesticide treatment for the areas highlighted in Exhibit “A” , Town-Wide Landscape Plan, and additional on demand services including hurricane/storm preparation and recovery services. The Town reserves the right to accept and award any or all of the Services to multiple firms on a non-exclusive basis.

B. PROPOSAL DUE DATE:

Sealed Proposals will be received at the Office of the Town Clerk, Town of Surfside, 9293 Harding Avenue, Surfside, FL 33154, until **2:00 p.m. local time, October 1, 2020** (the “Submission Deadline”), at which time all Proposals will be publicly opened.

Proposals must be addressed and delivered to:

RFP No. 2020-07 Comprehensive Landscape Maintenance and Related Services
Office of the Town Clerk
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154

C. PRE-PROPOSAL CONFERENCE AND SITE(S) VISIT.

A pre-proposal conference, will be held at 11:00 a.m. on **Tuesday, September 15, 2020. Attendance at this conference is encouraged in order to submit a proposal in response to this RFP and for the Project.** Please be advised that due to the declared state of emergency for the COVID-19 health pandemic, the meeting may occur virtually via zoom and notice and instructions will be provided by the Town Clerk. The meeting is not mandatory, but Proposers planning to submit proposals are encouraged to attend this meeting. All persons attending the pre-submission conference will receive the answers to all questions asked or submitted. A site(s) visit for interested proposers will occur on Wednesday, September 16, 2020 at 10:00 am. We ask that interested proposers only sent one representative per company due to the declared state of emergency for COVID-19 health pandemic.

Prior to submitting a proposal, each proposer is required to visit the sites or service areas and become familiar with the landscape and any conditions that may, in any manner, affect the Services to be performed by Contractor or affect the equipment, materials and labor required. The Proposer is also required to examine carefully the Specifications set forth in Section 3 of this RFP and be thoroughly informed regarding any requirements or conditions that may in any manner affect the Services to be performed under the Agreement. No allowances will be made because of lack of knowledge of any conditions or requirements.

D. Questions or Requests for Interpretations and Clarifications concerning this RFP should be directed via email to:

Sandra McCreedy, MMC
Town Clerk
Email: smccreedy@townofsurfsidefl.gov

Material issues to this RFP that are brought to the attention of the Town will be responded via Addenda and sent via email to all firms who have received copies of the RFP and registered with the Town.

E. In order to facilitate review of the proposals, each proposer must submit one (1) original, five (5) additional copies, and one (1) electronic copy on a USB drive of the proposal in response to this RFP, on or before the Submission Deadline indicated herein.

THE RESPONSIBILITY FOR OBTAINING AND SUBMITTING A PROPOSAL TO THE OFFICE OF THE TOWN CLERK ON OR BEFORE THE SUBMISSION DEADLINE IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER. THE TOWN IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE. ANY PROPOSAL RECEIVED AFTER THE SUBMISSION DEADLINE STATED IN THIS RFP WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. FACSIMILE AND EMAILED PROPOSALS SHALL NOT BE CONSIDERED.

Hand-delivered Proposals may be delivered to the above address during the Town's regular business hours, Monday through Friday, excluding holidays observed by the Town, but not beyond the Submission Deadline. Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required information appears on the outer label or envelope used by such service.

The Proposal must be signed by an authorized officer of the Proposer who is legally authorized to bind the Proposer and enter into a contractual relationship in the name of the Proposer. The submittal of a Proposal by a Proposer will be considered by the Town as constituting an offer by the Proposer to perform the required Services, upon the terms and at the prices stated by the Proposer.

F. ACRONYMS/DEFINITIONS

For the purposes of this RFP, the following acronyms/definitions will be used:

<i>Agreement</i>	Shall refer to the Agreement for Comprehensive Landscape Maintenance and Related Services that may result from this Request for Proposals. A form of Agreement is attached to this RFP as Attachment “B”, and is subject to final form and substance as approved by the Town Manager and Town Attorney.
<i>Contractor</i>	The organization(s)/individual(s) that is awarded and has an approved Agreement with the Town for the Services identified in this RFP.
<i>Commission</i>	The Town Commission of the Town of Surfside, Florida.
<i>Evaluation Committee</i>	An advisory committee comprised solely of representatives of the Town established by the Town Manager to evaluate, score and rank proposals submitted in response to the RFP.
<i>May</i>	Indicates something that is not mandatory but permissible.
<i>Proposal</i>	Shall refer to any offer(s) submitted in response to this Request for Proposals.
<i>Proposer</i>	Shall refer to anyone submitting a Proposal in response to the Request for Proposals.
<i>Request for Proposal, RFP</i>	Shall mean this Request for Proposals including all Exhibits and Attachments as approved by the Town and addenda, amendments or change orders issued by the Town.
<i>Responsible Proposer</i>	A proposer who has the capability in all respects to fully perform the Services requested in this RFP and the Agreement requirements and the capacity and reliability that will assure good faith performance.
<i>Responsive Proposal</i>	A proposal or reply submitted by a responsive and responsible proposer that conforms in all material respects to this RFP.
<i>Services, Project</i>	Shall refer to all matters, work and Services that will be required to be done by the Successful Proposer in accordance with the Scope of Services and the terms and conditions and Specifications of this RFP.
<i>Shall/Must</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement will, if material, result in the rejection of a proposal as non-responsive.

<i>Should</i>	Indicate something that is recommended but not mandatory. If the Proposer fails to provide recommended information, the Town may, at its sole option, ask the Proposer to provide the information or evaluate the proposal without the information. Failure to provide the information after demand may result in rejection.
<i>Sub-Contractor & Sub-Consultant</i>	Shall refer to any person, firm, entity, or organization, other than the employees of the Successful Proposer, who contract with the Successful Proposer to furnish labor, or labor and materials, in connection with the Services to the Town, whether directly or indirectly, on behalf of the Successful Proposer.
<i>Submission Deadline</i>	Shall refer to the due date and time listed in this RFP for the submittal of proposals to the Town.
<i>Successful Proposer(s)</i>	Shall refer to the Proposer(s) receiving an award as a result of this Request for Proposals.
<i>Town /Owner</i>	Shall refer to the Town of Surfside, Florida or its designated representative, as applicable.

SECTION 1

REQUEST FOR PROPOSALS (RFP No. 2020-07) Comprehensive Landscape Maintenance and Related Services

1.1 INTENT.

The Town of Surfside, Florida (“Town”) has issued this Request for Proposals (“RFP”) to invite qualified firms to submit proposals for Comprehensive Landscape Maintenance and Related Services. A more detailed Scope of Services is included under Section 3, Specifications, of this RFP.

1.2 SCHEDULE OF EVENTS.

The following schedule is anticipated for this RFP process, but is subject to change by the Town, in its sole discretion, at any time during the RFP procurement process.

No.	Event	Date*	Time* (EST)
1	Advertisement/ Distribution of RFP	8/26/2020	2:00 PM
2	Pre-Proposal Conference and Site Visit 9293 Harding Avenue Surfside, FL 33154	9/15/2020	11:00 AM
3	Deadline to Submit Questions / Requests for Clarification	9/18/2020	5:00 PM
4	Town Issues Addenda and Responds to Questions	TBA	TBA
5	Deadline to Submit RFP – Submission Deadline	10/01/2020	2:00 PM
6	Evaluation of Proposals	TBA	TBA
7	Period to request additional information or clarification from Proposers. The Town may interview Proposers	TBA	TBA
8	Award Proposal(s) and Agreement(s) at Commission Meeting	TBA	TBA
9	Notice to Proceed; Agreement Begins	TBA	TBA

1.3 CONE OF SILENCE.

The provisions of Town's Cone of Silence are applicable to this RFP. The Town's Cone of Silence provisions can be found under Section 3-17 of the Town Code of Ordinances. Questions regarding the Cone of Silence may be sent to:

Sandra McCready, MMC, Town Clerk
Town of Surfside
9293 Harding Avenue, Surfside, Florida 33154
smccready@townofsurfsidefl.gov

The Cone of Silence prohibits any communication regarding a competitive bid or solicitation for a purchase exceeding \$25,000.00, including but not limited to, a particular RFP, RFQ, solicitation or bid, between:

- (1) A potential respondent, vendor, service provider, proposer, bidder, lobbyist, or consultant, and
- (2) The Town Commissioners, Town Staff, including but not limited to, the Town Manager and his or her staff, or any member of the Town's Selection Committee or Evaluation Committee.

The Cone of Silence shall be imposed upon this RFP upon advertisement of the RFP. The Cone of Silence shall terminate at the beginning of the Town Commission meeting at which time the Town Manager makes his or her written recommendation to the Town Commission. However, if the Town Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until the meeting at which the Manager's subsequent recommendation is before the Town Commission.

The Cone of Silence shall not apply to:

- (1) Oral communications at pre-bid conferences;
- (2) Oral presentations before selection or evaluation committees;
- (3) Public presentations made to the Town Commissioners during any duly noticed public meeting;
- (4) Written communications at any time with any Town employee, unless specifically prohibited by the applicable solicitation documents. The respondent, bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) Written communications regarding a particular solicitation between a potential respondent, vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's purchasing agent or Town employee designated responsible for administering the procurement process for such solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) Communications with the Town Attorney and his or her staff;

1.4 SUBMISSION OF PROPOSAL.

One (1) original, five (5) copies, and one (1) electronic copy on a USB drive of the Proposal PLUS a USB containing all documents submitted shall be submitted no later than **OCTOBER 1, 2020, at 2:00 PM (“Submission Deadline”)** in a sealed envelope which must be plainly marked on the outside “RFP No. 2020-07, COMPREHENSIVE LANDSCAPE MAINTENANCE AND RELATED SERVICES” to:

Town Clerk Sandra McCready, M.M.C.
9293 Harding Ave, Second Floor
Town of Surfside, FL 33154
smccready@townofsurfsidefl.gov

Proposals will be publicly opened and read. All Proposers and their representative may be invited to be present. Proposals shall be typed or printed in ink. All blanks on the proposal form(s) must be completed. Names must be typed or printed below the signature. Facsimile and email proposals will **not** be accepted.

It shall be the sole responsibility of the Proposer to ensure that the sealed proposal is submitted by the time and date specified. Any proposal received after the appointed time, whether by mail or otherwise, shall **not** be accepted. Such proposals will be returned to the vendor unopened. Any uncertainty regarding the time a proposal is received shall be resolved against the Proposer.

Only one (1) proposal from any individual, firm, partnership, or corporation, under the same or different names, will be considered. If the Town determines that any Proposer has interest in more than one (1) proposal for Services contemplated; all proposals in which such a Proposer is interested will be rejected. Proposer by submitting this proposal certifies that this proposal is made without previous understanding, contract, or connection with any person, firm or corporation making a proposal for the same material, supplies, equipment or services and is in all respects, fair and without collusion of fraud.

1.5 PROPOSAL REQUIREMENTS & FORMAT.

Proposers must submit one (1) original, five (5) copies, and one (1) electronic copy on a USB drive to the Town Clerk on October 1, 2020, by 2 P.M. (“Submission Deadline”). Proposals must be typed or filled in with ink and submitted on 8 ½” x 11” size paper, using a single method of fastening. Each Proposer must present its products, services, and applicable features in a clear and concise manner that demonstrates the proposer’s capabilities to satisfy the requirements of this RFP. The emphasis should be on accuracy, clarity, comprehensiveness and ease of identifying pertinent information and suitability of the Services. Proposals **MUST** include the following:

- 1.5.1. Proposer shall provide complete and accurate copies, with all required signatures and notarizations, for all the forms in the Proposal Package:
 - 1.5.1.1. Form 1. Proposal Form Package Acknowledgement.
 - 1.5.1.2. Form 2A. Proposer’s Certification (if Company or Corporation)
 - 1.5.1.3. Form 2B. Proposer’s Certification (if Partnership)
 - 1.5.1.4. Form 3. Single Execution Affidavits
 - 1.5.1.5. Form 4. Dispute Disclosure

- 1.5.1.6. Form 5. Certification Regarding Debarment, Suspension, & Other Responsibility Matters Primary Covered Transactions
- 1.5.1.7. Form 6. Proposer's Qualifications Survey
- 1.5.1.8. Form 7. Statement of Qualifications Checklist
- 1.5.1.9. Form 8A. Price Submittal Schedule Form – General Monthly Maintenance
- 1.5.1.10. Form 8B. Price Submittal Schedule Form – On Demand Additional Services
- 1.5.1.11. Form 8C. Price Submittal Schedule Form – Hurricane/Storm Preparation & Recovery
- 1.5.1.12. Form 9. Reference List
- 1.5.1.13. Form 10. Federally Required Clauses Affidavit

1.5.2. Proof of Experience. Provide documentation evidencing the experience of the proposer and demonstrating that the proposer has successfully provided Services similar to those specified herein to other agencies of similar size and needs as the Town. The proposer firm shall be currently engaged in landscaping and maintenance services on a full time basis and shall have been in existence and continuous operation providing the Services for a minimum of five (5) years.

1.5.3. Safety Record. Proposer shall provide documentation evidencing the safety record of the proposer in performing similar services, including information as to any safety violations, assessments or citations issued by applicable governmental agencies in the past five (5) years.

1.5.4. Proposer's Qualifications. Include name, function, and qualifications of key personnel in the organization who will be providing g Services and involved in this Project. The key person or contact assigned to this Project shall within the past three (3) years have conducted and been responsible for providing Services in a similar project or environment. Please note, to receive further consideration, all proposers must provide the necessary documentation to demonstrate that they meet the following minimum qualifications:

1.5.4.1. Service and Incorporation – Contractor shall have been in business and continuous operation and service and incorporated in the State of Florida for a minimum of five (5) years.

1.5.4.2. Licenses – Contractor must be fully licensed with all applicable and required licenses, certifications and permits for landscaping and fertilization and pest control services, and hurricane/storm preparation and recovery services, including government licenses, certifications, and permits from the State of Florida, Miami-Dade County, the Town, and any other governing governmental regulatory authorities.

1.5.4.3. Pesticide Certification - Contractor must have, subcontract and/or retain an individual or company with a certified pesticide operator license and/or certification through the State of Florida, Department of Health and Rehabilitative Services, as well as any and all licenses and certifications required by applicable law for pesticide applications. The operator or individual holding the pesticide license or certification shall perform pesticide applications for this Project and comply with all State, County and Town laws and regulations.

1.5.4.4. Tree Trimmer's License – Contractor must have at least one (1) employee on site during all tree trimming services who possesses a Class B Tree Trimmer's license or better, as required by Miami-Dade County and applicable law.

1.5.4.5. Florida Green Industries Certification - Contractor must have at least one (1) full time employee who has completed the Florida Green Industries Best Management Practices workshop dedicated to this Project.

1.5.5. Insurance Certificates. Proposer shall provide certificates of insurance as follows:

1.4.5.1. Commercial General Liability

1.4.5.2. Workers Compensation & Employer's Liability

1.4.5.3. Business Automobile Liability

1.5.6. Proposer may provide any additional information that highlights experience or expertise, which is relevant and directly applicable to this RFP.

1.6 ADDENDA, CHANGES, OR REQUESTS FOR INTERPRETATION DURING PROPOSAL PROCESS.

The Town will not respond to oral inquiries or questions concerning this RFP. All written inquiries, requests for interpretation or clarification shall be sent to:

Sandra McCready, M.M.C.
Town of Surfside Clerk
9293 Harding Ave, Second Floor
Town of Surfside, FL 33154
smccready@townofsurfsidefl.gov

Any written inquiry or request for interpretation or clarification must be sent by e-mail or written correspondence and received by the Town no later than Friday, September 18, 2020 at 5:00pm.

All such interpretations or clarifications will be made in writing in the form of an Addendum to this RFP issued by the Town to all known and/or registered prospective proposers. Each prospective proposer shall acknowledge receipt of such Addenda by including it in the Proposal Form. All Addenda shall be a part of this RFP and a part of the Agreement and each proposer will be bound by such Addenda, whether or not received. It is the responsibility of each prospective proposer to verify that it has received all Addenda issued before proposals are submitted and opened.

1.7 EVALUATION PROCESS.

1.7.1 Evaluation Committee.

The Town shall be sole judge of its best interests in evaluating proposals deemed most advantageous to the Town, and the resulting Agreement to be entered into between the Town and the Contractor. The Town Manager shall select and appoint an Evaluation Committee to evaluate proposals.

1.7.2 Initial Screening (Step 1).

Minimum Qualifications and Responsiveness: The Evaluation Committee will review proposals for an initial determination on minimum qualifications, responsiveness and responsibility. The proposals initially determined to be responsive and submitted by responsible proposers will proceed to Step 2.

1.7.3 Evaluation of Proposals (Step 2).

The Evaluation Committee may interview proposers, request additional information or clarification of proposals and information submitted, and will evaluate proposals using the criteria herein. Due to the multi-task nature of the Comprehensive Landscape Maintenance and Related Services, the evaluation of all proposals will not be based solely on quantity and price. All of the factors contained herein and demonstrated in each proposal will be taken into consideration and evaluated. Proposals will be scored and ranked in accordance with the following criteria:

<u>CRITERIA</u>	<u>MAXIMUM POINTS</u>
Qualification and experience of key personnel who will be directly involved in all elements of the Services.	10
Firm's experience with services that are similar to the Comprehensive Landscape Maintenance and Related Services requested in this RFP	20
Safety record.	10
Proposal Pricing or fees for Services.	60
Total	100

The three (3) highest ranked proposals will be identified and those firms may be requested to make a formal presentation before the Evaluation Committee and/or the Town Commission. The Evaluation Committee will score and rank the proposers and provide same to the Town Manager. The Town Manager will then make a recommendation to the Town Commission, which reserves the right to reject any or all proposals or parts thereof, select and award proposer(s) for all or any of the Services, to waive any informality, irregularity, or technicality in any proposal, to cancel or re-advertise for proposals, or take any other such actions that may be deemed to be in the best interests of the Town.

The Town Commission, in its sole discretion, shall select and approve one or more proposals and shall authorize the award of an Agreement(s) to the Successful Proposer(s).

1.8 TOWN’S RIGHTS.

The Town reserves the right to accept or reject any and/or all proposals or parts of proposals, to workshop or negotiate any and all proposals, to select and award proposer(s) for all or any of the Services, waive irregularities in proposals, to cancel or discontinue this RFP process, and to request

new proposals on the required work or Services. The Town Commission shall make the final determination and award of proposal(s).

All materials submitted in response to this Request for Proposals become the property of the Town and will be returned only at the option of the Town. The Town has the right to use any or all ideas presented in any proposals or responses to the RFP, whether amended or not, and selection or rejection of Proposals does not affect this right.

1.9 AWARD OF PROPOSAL.

The Town anticipates entering into an Agreement(s) with the Successful Proposer(s) determined by the Town to be in compliance with the requirements of this RFP and in the best interest and most advantageous to the Town. The Town reserves the right to accept or reject any and/or all proposals or parts of proposals, to workshop or negotiate any and all proposals, to waive any irregularities, to cancel or discontinue this RFP, and to request new proposals on the required materials or Services. The Town also reserves the right to waive minor variations to the Specifications (interpretation of such to be made by the applicable Town department personnel). Final determination and award of proposal(s) shall be made by the Town Commission.

Neither this RFP, nor the notice of award of the Agreement(s) constitutes an agreement or contract with the Successful Proposer(s). An agreement or contract is not binding until a written agreement or contract, in substantially the form attached hereto as Exhibit "C," has been executed by the Town and the Successful Proposer(s) and approved as to form, content, and legal sufficiency by the Town Manager and Town Attorney.

END OF SECTION 1

SECTION 2

TERMS AND CONDITIONS

INTRODUCTION

All proposals submitted in response to this RFP and any Agreement(s) awarded to the Successful Proposer(s) must conform to the following terms and conditions.

2.1. PURPOSE OF PROPOSAL.

The Town of Surfside, Florida (“Town”) requests proposals from qualified firms to provide Comprehensive Landscape Maintenance and Related Services on a non-exclusive basis,, including fertilization and pest control services, on demand additional services, and hurricane/storm preparation and recovery services. The frequency, nature, scope and definition of the Services desired or required by the Town may change from time to time, at the Town’s discretion. Although this RFP identifies specific locations to be serviced in the Town Landscape Maintenance Locations Map, attached hereto as Exhibit “A,” the Town reserves the right, in its sole discretion, to add additional locations or delete locations to be serviced.

The Town intends to secure a source of supply(s) for the Services from a qualified contractor(s) that conform to the requirements of this RFP and is most advantageous to the Town and in its best interest. The Town reserves the right to award the proposal(s) considered to best serve the Town’s interests.

In the event of any conflicts between provisions contained in the General Conditions and Specifications, the provisions contained in the Specifications shall govern and prevail.

2.2. SUBMISSION OF PROPOSALS.

Proposers must use the proposal form(s) furnished by the Town with this RFP, as well as provide any information requested by this RFP. Failure to do so may cause the proposal to be rejected. Removal of any part of the proposal may invalidate the proposal. Incomplete, unresponsive, irresponsible, vague or ambiguous responses to this RFP may be just cause for rejection, as determined by the Town.

Proposer warrants that the terms and conditions quoted in the proposal, including pricing, will be firm for a period of one hundred eighty (180) days from the date of the proposal opening unless otherwise stated by the Town.

2.3. DELIVERY.

All materials and goods in connection with the Services shall be delivered F.O.B. destination (i.e., at a specific Town address), and delivery costs and charges (if any) will be included in the proposal pricing. Exceptions should be noted.

2.4. MATERIALS.

Any materials or products delivered by Contractor pursuant to this RFP shall remain the property of the Contractor or vendor until accepted to the satisfaction of the Town. In the event material(s) or products supplied to the Town are found to be defective or do not conform to the requirements of this RFP or the Specifications, the Town reserves the right to return the materials or product(s) to the Contractor, at the Contractor's expense.

2.5. PRICING. The price schedule forms attached to this RFP under Section 4 and to be included with each proposal shall specify the Proposer's pricing and/or fees for the materials and Services requested herein. Proposer should include any and all applicable taxes in proposal prices. If the proposer is awarded an Agreement pursuant to this RFP, the prices and fees quoted in the proposal shall remain fixed and firm during the term of the Agreement.

2.6. PROPOSAL COSTS.

Proposers submitting proposals do so entirely at their own cost and expense. There is no expressed or implied obligation by the Town to reimburse any individual or firm for any costs or expenses incurred in preparing or submitting proposals, providing additional information when requested by the Town, or for participating in any selection interviews.

2.7. LICENSES AND PERMITS.

Proposer shall secure any and all necessary and required licenses, certifications and permits to conduct the Comprehensive Landscape Maintenance, including fertilization and pest control and Public Works Services and Miscellaneous Functions including, but not limited to, all Federal (Environmental Protection), State, County and Town licenses and permits. All proposers must provide the necessary documentation to demonstrate that they meet all applicable licensing and permitting requirements, including the following:

2.7.1. Licenses – CONTRACTOR must be fully licensed with all applicable and required licenses, certifications and permits for landscaping and fertilization and pest control services, including State, Miami-Dade County and/or Town licenses, certifications and permits.

2.7.2. Pesticide Certification - CONTRACTOR must have, subcontract and/or retain an individual or company with a certified pesticide operator license and/or certification through the State of Florida, Department of Health and Rehabilitative Services, as well as any and all licenses and certifications required by applicable law for pesticide applications. The operator or individual holding the pesticide license or certification shall perform pesticide applications for this Project. Any replacement of or change to the certified pesticide operator during the term of the Agreement shall require prior written notice to the Town and the approval of the Town to such certified pesticide operator.

2.7.3. Tree Trimmer's License – CONTRACTOR must have at least one (1) employee on site during all tree trimming services who possesses a Class B Tree Trimmer's license or better, as required by Miami-Dade County and applicable law.

2.7.4. Florida Green Industries Certification - CONTRACTOR must have at least one (1) full time employee who has completed the Florida Green Industries Best Management Practices workshop dedicated to this Project.

By submitting a proposal in response to this RFP, Proposer represents and warrants to the Town that it holds all licenses, certifications and permits (“Licenses”) required by applicable law and by any other governmental authority or agency to perform the Services. Proposer represents and warrants to the Town that the Licenses shall be in full force and effect on the date of performance of the Services and further represents that it holds and will hold all Licenses throughout the term of the Agreement. Proposer shall provide the Town with copies of all Licenses and any additional permits that may be required for performance of the Services with its proposal and during the term of the Agreement.

Where the Contractor is required to enter onto Town property, public rights-of-way or other property to deliver materials or to perform the Services as a result of a proposal award, the Contractor will assume the full duty, obligation and expense of obtaining all necessary approvals, licenses, permits, inspections and insurance required. The Contractor shall be liable for any damages or loss to the Town, property or person occasioned by the acts or omissions, or the negligence of the proposer, (or their agent) or any person the proposer has designated in the completion of the Services, as a result of the proposal.

2.8. INSURANCE.

2.8.1 Contractor shall secure and maintain throughout the duration of this RFP and agreement, if selected, insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Contractor’s insurance and shall not contribute to the Contractor’s insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent. Copies of Contractor’s actual Insurance Policies as required herein and Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured. Each Policy and certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. All coverage forms must be primary and non-contributory and the Contractor shall provide a waiver of subrogation for the benefit of the Town. The Contractor shall be responsible for assuring that the insurance policies and certificates required by this Section remain in full force and effect for the duration of the Services.

2.8.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed

Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

2.8.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this RFP who is not covered by Worker's Compensation insurance.

2.8.1.3. Business Automobile Liability with minimum limits of \$1,000,000.00 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

2.8.2 The Contractor agrees to indemnify, defend and hold harmless the Town from and against any and all claims, suits, judgments, losses, damages, executions and/or liabilities as to bodily injuries and/or property damage which arise or grow out of the Agreement or Contractor's performance of the Services required by this RFP.

2.8.3 The Contractor shall also, upon request by the Town, provide copies of all official receipts and endorsements as verification of Contractor's timely payment of each insurance policy premium as required by the Agreement.

2.9. COMPLIANCE WITH LAW AND OTHER REQUIREMENTS.

Contractor shall conduct its operations in compliance with all applicable federal, State, County and Town laws in providing the Services required by this RFP, including specifically: Section 54-78, "Prohibited Noises." of Chapter 54 of the Town's Code of Ordinances regulating inter alia noise, power tools and landscaping equipment and leaf blowers; Florida Friendly Landscape Requirements of Chapter 90, Article VII, Landscape Requirements, Sections 90-85 to 90-95 of the Town Code; Ordinance No. 2019-1696 of the Town of Surfside banning the use of herbicides containing glyphosate for landscape and maintenance work in all Town properties and facilities.

2.10. FEMA REQUIREMENTS; HURRICANE/STORM PREPARATION AND RECOVERY SERVICES

2.10.1. This procurement shall conform in all respects to the *Federally Required Clauses* including, but not limited to, the clauses found on Form 12 under Section 4.

2.10.2. The Contractor is bound by and must comply with the requirements of the April 2018 FEMA Public Assistance Program and Policy Guide, which is hereby incorporated by

reference and available online at this link: <https://www.fema.gov/media-library/assets/documents/111781>.

2.11. ASSIGNMENT.

The Contractor shall not transfer or assign the performance of the Services required by this RFP and the Agreement without the Town's prior written consent. Any award issued pursuant to this RFP and monies which may be payable by the Town, are not assignable except with the Town's prior written approval.

2.12. ATTORNEY'S FEES.

If the Town incurs any expense in enforcing the terms of the Agreement, whether suit be brought or not, Contractor agrees to pay all such costs and expenses including, but not limited to, court costs, interest and reasonable attorney's fees.

2.13. CONTRACTOR'S RELATION TO THE TOWN.

It is expressly agreed and understood that the Contractor is in all respects an independent contractor as to all Services hereunder, and that the Contractor is in no respect an agent, servant or employee of the Town. This RFP specifies the Services to be performed by the Contractor, but the method to be employed to accomplish the Services shall be the responsibility of the Contractor, unless otherwise provided in the Agreement or by the Town.

2.14. DISCRIMINATORY PRACTICES.

The Contractor shall not discriminate or deny service, deny access, or deny employment to any person on the basis of race, color, creed, sex, sexual orientation, religion or national origin. The Contractor will strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the State of Florida or the Federal Government.

2.15. TIME IS OF THE ESSENCE; DELIVERY OF SERVICES.

The Contractor acknowledges and agrees that time is of the essence in the performance and delivery of the Services hereunder.

2.16. CANCELLATION.

Failure on the part of the Contractor to comply with the conditions, specifications, requirements and terms as determined by the Town, shall be just cause for cancellation of the award, with the Contractor holding the Town harmless.

2.17. DISPUTES.

If any dispute concerning a question of fact arises under the resulting Agreement, other than termination for default or convenience, the dispute will be handled by the Town Manager.

2.18. TERMINATION FOR DEFAULT.

In the event of default by the proposer or Contractor, the Town may terminate the Agreement, procure the Services from other sources and hold the proposer or Contractor responsible for any excess costs occasioned or incurred thereby.

2.19. TERMINATION FOR CONVENIENCE.

The Town may terminate the Agreement, in whole or in part, for convenience upon five (5) days prior written notice to the Contractor. Upon such termination, the Town shall be responsible to the Contractor only for payment in accordance with the payment provisions of the Agreement for those Services rendered prior to and through the date of termination.

2.20. INDEMNIFICATION.

The Contractor shall indemnify, save harmless and defend the Town, its officers, agents and employees from and against any claims, demands or causes of action of whatsoever kind or nature arising out of any act, error, omission, negligent act, conduct or misconduct of the Contractor, its agents, servants or employees, in the performance of the Services pursuant to this RFP and/or from any procurement decision of the Town including without limitation, awarding the Agreement to a Contractor.

2.21. MULTIPLE /OTHER VENDORS.

The Town reserves the right to select and award multiple proposers to provide one, some or all of the Services. If the selected contractors are unavailable, the Town reserves the right to seek and obtain other sources.

As tasks and schedules are identified, substantial completion times will be mutually agreed upon between the Contractor and the Town.

2.22. PUBLIC ENTITY CRIME/DISQUALIFICATION.

Pursuant to Section 287.133(3)(a), Florida Statute, all proposers are advised as follows:

“A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

2.23. NO CONTINGENT FEE.

Proposer shall warrant that it has not employed or retained any company or person, other than a bona fide employee working solely for the Proposer, to solicit or secure the Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Proposer, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making the Agreement. For the breach or violation of this provision, the Town shall have the right to terminate the Agreement, without liability, at its discretion.

2.24. PUBLIC RECORDS; CONFIDENTIALITY.

Proposers are hereby notified that all information submitted as part of or in support of proposals submitted pursuant to this RFP are public records subject to public disclosure in accordance with Chapter 119, Florida Statutes. If there is any apparent conflict between Florida's Public Records Law and this RFP, Florida Law will govern and prevail.

All proposals submitted in response to this RFP shall become the property of the Town. Unless the information submitted is proprietary, copyrighted, trademarked, or patented, the Town reserves the right to utilize any or all information, ideas, conceptions, or portions of any proposal in its best interest. Acceptance or rejection of any proposal shall not nullify the Town's rights hereunder.

END OF SECTION 2

SECTION 3

SCOPE OF SERVICES

3.1 INTRODUCTION.

The Town is seeking proposals from qualified firms to provide all materials and services necessary to provide Comprehensive Landscape Maintenance and Related Services, including pest control, fertilization and on demand additional services, including hurricane/storm preparation and recovery services, in accordance with the terms, conditions, and specifications contained in this Request for Proposals (“RFP”). The Town reserves the right to award some or all Services to one or more qualified firms on a non-exclusive basis.

3.2 SCOPE OF WORK

3.2.1. SUMMARY

The landscape objectives for this Project are to provide a visually pleasing and environmentally sound landscape with high standards of maintenance.

3.2.2. The Scope of Services and Schedule are summarized in the table below:

Scope of Services
Irrigation
Mowing
Trimming
Shrub Pruning
Mulching
Weed Control
Tree and Palm Pruning
Fertilization
Pest Scouting and Treatment
On Demand Additional Services
Hurricane/Storm Services
Locations of Services

3.2.3. Service Areas.

3.2.3.1. The areas to be serviced and included in this RFP are shown in the Landscape Maintenance Locations Map, attached hereto as Exhibit “A,” and consist of Town property, parks, rights-of-ways, and common areas, which include but are not limited to hardpack, walking path, dunes, beach ends, and street ends.

3.2.3.2. Each area of service is different and the scope of work shall vary by location as follows:

Item Number	Item Description / Location	Sod	Trees	Hedges
1.0.0	<u>Park and Recreation Facilities</u>			
1.1.1	Town of Surfside Community Center	YES	YES	YES
1.1.2	Veterans Park and Tennis Center	YES	YES	YES
1.1.3	96th Street Park	YES	YES	YES
1.1.4	Hawthorne Tot Lot	YES	YES	YES
1.1.5	Dog Park - Surfside Paws Up Park	YES	YES	YES
1.1.6	Community Garden (Including lift station)	YES	YES	YES
2.0.0	<u>Parking Lots</u>			
2.0.1	Abbott Parking Lot	NO	YES	YES
2.0.2	94th Street Parking Lot	NO	YES	YES
2.0.3	Town Hall Parking Lot	NO	YES	YES
2.0.4	93rd Street Parking Lot	NO	YES	YES
2.0.5	95th Street Parking Lot	NO	YES	YES
2.0.6	Collins Avenue Parking Lot	NO	YES	YES
3.0.0	<u>Right of Way</u>			
3.1.1	Beach Ends	YES	YES	YES
3.1.2	Street Ends	YES	YES	YES
3.1.3	Hardpack / Walking Path	NO	NO	NO
3.1.4	Harding Avenue Roadway (Downtown Surfside)	NO	YES	YES
3.1.5	All Right of Way (ROW), roundabouts and medians	VARIES	VARIES	VARIES

3.2.3.3. A Tree Schedule Inventory table, attached as Exhibit “B,” outlines the number of trees in each service area that will require Comprehensive Landscaping Maintenance and Related Services from the Proposer.

3.2.4. Quality Assurance.

3.2.4.1. Contractor shall be an individual or firm of established capability, experience and reputation, which is regularly engaged in, and which maintains a regular force of workers skilled in performing the Services as outlined in this RFP.

3.2.4.2 All Contractors shall visit the site(s) and inspect all Service areas and landscape prior to submitting a proposal.

3.2.4.3. All Contractors shall comply with all sections of these Specifications.

3.2.4.4. No Services are to be subcontracted without the prior written consent of the Town.

3.2.4.5. Contractor shall comply with all applicable local, state and federal health and safety requirements, including the latest revisions to the Occupational and Safety and Health Administration (OSHA) standards, American National Standards Institute (ANSI) Z133.1-2000 (Tree Care Operations-Safety Requirements) and State of Florida Department of Transportation (FDOT vehicle safety and traffic control requirements).

3.2.4.6. Contractor shall designate a competent supervisor or foreman to oversee all Services described in these Specifications.

3.2.4.7. Contractor shall be responsible for promptly notifying the Town of any damage to irrigation systems, buildings, vehicles or other structures, properties or possessions, which occur as a result of all Services performed pursuant to this RFP, or improper or negligent activities, as defined in these Specifications.

3.3. LABOR, EQUIPMENT, PRODUCTS AND MATERIALS.

3.3.1 Contractor shall be responsible for providing all labor, materials, supplies, tools, services and equipment, and all other incidentals required to complete the Services, as needed to completely and accurately perform the Services outlined in these Specifications. Equipment and materials furnished shall be of the appropriate quality, type, size and quantity needed to adequately accomplish the Services. Contractor shall provide sufficient numbers and types of equipment to handle the work load, including utility vehicle(s), tractor(s), mowers, edger, hedgers, trimmers, sprayers, etc. The Town may require the Contractor to have at least one (1) utility vehicle on site (7) days a week. Every commercial vehicle operated on the streets of the Town shall at all times display, permanently affixed and plainly marked on both sides, the Contractor’s name and telephone number. If a vehicle is rented, the information may be affixed to signs made of magnet and attached at all times while operating within the boundaries of the Town.

3.3.2 Contractor shall be responsible for regularly inspecting all equipment to be used on the Project site and for providing scheduled preventative maintenance, so as to prevent any damage or injury to landscaping, property, structures or the environment.

3.3.3 All fertilizer and pesticide products shall be delivered in original, unopened, and undamaged containers with labels intact.

3.3.4 The Town Manager or his designee reserves the right to inspect and approve all materials delivered and used according to these Specifications including fertilizers, pesticides, soils, trees, plant material, mulch, etc.

3.3.5 Contractor shall ensure that at least one (1) member of each maintenance crew (preferably the supervisor) speaks English fluently. Contractor shall supply each employee with a uniform shirt with the firm name and employee name clearly identified, to be worn at all times during the performance of Services. Contractor's employees' clothing must be neat and clean.

3.3.6 Contractor shall be required to follow the "State of Florida Manual on Traffic Control and Safe Practices." Contractor shall be responsible for providing all safety gear, equipment and traffic control devices for employees and maintenance personnel. In case of any street or lane closures, a Maintenance of Traffic (MOT) shall be provided to the Town.

3.3.7 The hourly rates quoted for labor shall include full compensation for labor, equipment, materials, travel time, and any other cost to the proposer.

3.4 SCOPE OF WORK – LANDSCAPE MAINTENANCE SPECIFICATIONS

3.4.1 IRRIGATION

The contractor shall be responsible for the maintenance, repairs, and timing of irrigation systems within the Service areas. All systems are inspected by the contractor one (1) time per month to check for broken heads, lines, valves, timers, and water coverage patterns. Broken heads and lines, and water coverage adjustments shall be made by the contractor with approval by the Town. The Contractor must promptly report any malfunctioning valves, pumps, or timers to the Town for repair. Material pricing shall be provided for approval prior to proceeding with repairs.

3.4.2 MOWING

3.4.2.1 All turf areas shall be mowed with rotary mowers one (1) time each fourteen (14) days year-round. The rest of the year, turf areas shall be mowed one (1) time each fourteen (14) days, or as needed to keep the grass from growing more than 1.5" above the cutting height. Total number of cuts per year shall be at least 26. Mulching mowers are preferred. Any additional requests for mowing may be made by the Town and paid at awarded rate per location.

3.4.2.2 Mowing height shall be no less than 3.0" for St. Augustine grass, as measured on a flat, paved surface. Mowing height in shaded areas shall be slightly higher. Height shall be approved by the Town under other circumstances not listed.

3.4.2.3 All debris and/or litter shall be removed from turf areas prior to mowing. Any animal waste products and or dead animals shall be removed prior to cutting.

3.4.2.4 Injuries to tree trunks, exposed roots, and shrub bases shall be avoided by either mowing at a greater height or by mowing around them and hand-trimming later. If any injuries occur, they are to be reported to the Town for further direction.

3.4.2.5 Mower blades shall be kept sharp at all times so as to prevent tearing of leaf blades.

3.4.2.6 All grass clippings shall be removed from parking lots, rights-of-way, driveways, sidewalks, and planter beds using, vacuums, brooms and/or rakes. Clippings shall not be blown out into streets or adjacent areas. Per Town ordinance, leaf blowers are not allowed to be used for any landscape operations. All grass clippings, leaves or other vegetation are to be hauled out by the contractor.

3.4.2.7 Not all locations require mowing. Locations that require bi-weekly mowing are park and recreation facilities and various rights-of-way. The contractor is to walk these locations prior to submitting pricing to make determination.

3.4.3 EDGING AND TRIMMING

3.4.3.1 All edges along bed lines, tree rings, parking lots, driveways, sidewalks, etc. shall be mechanically edged simultaneously with regular mowing service visits to keep turf from encroaching into other areas. Total number of visits per year shall be at least 26.

3.4.3.2 All turf around all sprinkler heads shall be trimmed one (1) time per month or as often as needed to prevent interference with or intercepting the output of water. Any damages to irrigation system as a result of moving or edging are the responsibility of the contractor for replacement.

3.4.3.3 The use of nylon cord trimmers (weed-eaters) around tree trunks or hedges shall not be permitted (tree rings and bed lines must be maintained); they may be used around sprinkler heads, fences, posts, and other non-living structures which shall not be damaged by such.

3.4.3.4 All trimmings shall be removed from parking lots, rights-of-way, driveways, sidewalks, and planter beds using, vacuums, brooms, and/or rakes. Clippings shall not be blown out into streets or adjacent areas. Per Town ordinance, leaf blowers are not allowed to be used for any landscape operations.

3.4.3.5 All trimmings shall be collected regularly and disposed of at authorized dumping or recycling sites. Tickets for dumps shall be collected and quantified at the end of the month and provided to the Town.

3.4.4 SHRUB PRUNING

3.4.4.1 All landscaped areas shall be inspected during each regular service visit to ascertain whether any pruning and trimming is needed to maintain plants within their intended bounds, to remove dead or damaged plant parts including limbs, branches, palm fronds, stems, or flowers, and to keep plants from encroaching onto parking lots, rights-of-way, driveways, sidewalks, streets, windows, signs, lighting, etc.

3.4.4.2 Appropriate pruning tools (pruning clippers, loppers, and hand saws) shall be used and properly maintained with sharpened blades at all times. Machetes, breakage by hand, and climbing spikes shall not be permitted unless pre-approved by the Town.

3.4.4.3 All hedges shall be sheared using gas-powered shearing equipment to maintain the desired height and width. Hedges shall be allowed to produce new foliage and flowers in between shearing operations.

3.4.4.4 One (1) time per year, all sheared hedges shall be pruned to reduce overall height by four (4) to six (6) inches below normal cutting height, so as to remove accumulations of woody twigs created by shearing. The hedges shall then be allowed to grow back up to the desired height, where they shall again be maintained.

3.4.4.5 All massed shrub beds shall be pruned as needed to maintain plants within their intended bounds, prune off old flowers, clean out old leaves, and create a naturalistic mass effect. Plants shall not be individually shaped.

3.4.4.6 All ground cover material shall be regularly pruned and cleaned as needed to remove any dead or damaged plant parts, including old leaves, flowers, and stems. Periodically, as needed, it may be necessary to thin or reduce the size of the plantings by removing sections of plants or clusters.

3.4.4.7 All shrub material in parking lot areas and adjacent rights-of-way areas shall be maintained at a maximum height of 36" from the top of the adjacent curb. Visibility into parking lots and rights-of-way shall not be obstructed by over growth.

3.4.4.8 All palms which are less than fifteen (15) feet in overall height shall be pruned as needed to remove brown fronds, coconuts, and inflorescences. Each individual frond shall be cut as close to the trunk as possible, removing the entire leaf base, including all spines. Thatch accumulations on trunks shall be regularly removed as it naturally loosens. Any palms which have spines on their fronds (i.e., pygmy date palms) and are located within three (3) feet of a pedestrian area shall regularly have the spines hand-clipped from the bases of the fronds, or the entire frond shall be removed if it does not create an unbalanced crown.

3.4.4.9 All clustering palms which are less than fifteen (15) feet in overall height shall be pruned as needed to remove brown fronds and inflorescences. Periodically (no more than one time per year), some thinning of the clusters may be required; approximately 1/4 to 1/3 of the total number of stems, evenly distributed throughout the cluster and at staggered heights, shall be cut at ground level and removed. Palms shall not be "cleaned" to remove all young stems.

3.4.4.10 All hardwood trees which are less than fifteen (15) feet in overall height shall be pruned as needed to remove dead branches, or to raise or reduce crowns to prevent

them from encroaching into pedestrian/vehicular areas, over windows, sidewalks, signs, etc. There shall be no other “cleaning”, “thinning”, or “raising” of tree crowns. All other tree and palm pruning shall be the responsibility of a qualified arborist or tree crew.

3.4.4.11 All clippings and debris, including fallen palm fronds and nuts, fruits shall be collected regularly and disposed of at authorized dumping or recycling sites.

3.4.5 MULCHING

3.4.5.1 All hedges, shrubs, planter beds, and free-standing palms and hardwood trees shall be mulched using naturally-colored, shredded eucalyptus or heat-sterilized melaleuca mulch, Grade B or better, layered to and maintained at a depth of at least but no more than one (1) to two (2) inches at all times.

3.4.5.2 All free-standing palms and shade trees shall have circular tree rings maintained uniformly at a distance of 18-inch radius (36-inch diameter) from the trunk, within which mulch shall be maintained. Trees and palms shall be centered in the tree rings.

3.4.5.3 Mulched areas shall begin two (2) to four (4) inches from trunks or stems and continue out to completely fill in shrub beds and tree rings. Mulch shall not be allowed to cover crowns of shrub plants or accumulate against the trunks of trees and palms.

3.4.5.4 Mulching is not allowed in Right of Way areas. Mulching will be limited to parks and recreation; street ends and beach end properties as well as parking lots where pre-approved by the Town.

3.4.6 WEED CONTROL

3.4.6.1 Weeds shall be removed by hand during each regular service visit in all landscaped areas, including the removal of weeds growing in thatch on palm trunks, fallen palm fruits, and tree/palm seedlings (“volunteers”) in hedges and shrub beds.

3.4.6.2 All weeds in driveways, sidewalks, fence lines, or other hardscape areas shall be removed by hand. The use of Round-Up (Glyphosate) herbicide is not permitted. Any spray on applications of other herbicides must confirm with Town ordinance and be pre-approved by the Town after specifications have been submitted for review.

3.4.6.3 All debris shall be collected regularly and disposed of at authorized dumping or recycling sites.

3.5. SCOPE OF WORK – TREE AND PALM PRUNING

3.5.1 All shade trees and palms shall be pruned following the standards set forth in the American National Standard for Tree Care Operations, ANSI A-300 (Part 1)-2001 Pruning; (11 West 42 Street, New York, N.Y. 10036).

3.5.2 Pruning practices including tree inspection, tools and equipment, and pruning cuts, shall be performed as outlined in the ANSI A-300 standards.

3.5.3 Hardwood trees shall be pruned one yearly, as determined according to pruning objectives, tree species, tree age/size, tree condition, location, and usage.

3.5.4 The pruning types to be implemented on hardwood trees shall be determined prior to each pruning cycle and shall consist of one or a combination of the following pruning types, as defined in the ANSI A-300 standards: crown cleaning, crown thinning, crown raising, and crown reduction.

3.5.5 Trees with crowns which spread over roadways shall be pruned by canopy raising and/or canopy reduction such that a 15-foot vertical clearance is maintained.

3.5.6 Trees with crowns which spread over sidewalks and other pedestrian areas shall be pruned by canopy raising and/or canopy reduction such that an 8-foot vertical clearance is maintained.

3.5.7 Trees with crowns which spread over parking lots shall be pruned by canopy raising and/or canopy reduction such that a 12-foot vertical clearance is maintained. If 12-foot clearance can't be accomplished due to age of tree, pruning should occur in such a way to not obstruct parking stalls.

3.5.8 Trees adjacent to buildings, structures, power lines, fences, light posts, signs, or other fixtures shall have their crowns reduced to provide clearance from those structures or fixtures.

3.5.9 Palms shall be pruned two (2) times per year, in March and October.

3.5.10 Palms shall be pruned such that all brown lower fronds and no more than one (1) to two (2) rows of live fronds are removed. Live healthy fronds which are initiated above the horizontal plane shall not be removed (maximum frond removal shall result in a "9 and 3" position, as it relates to the face of a clock). All inflorescences and fruits (including coconuts) shall be removed.

3.5.11 Palm frond petioles shall be severed as close to the trunk as possible without causing damage to trunk tissues. All loose frond bases ("boots" and "thatch") shall be removed. Those which do not readily abscise shall not be forced, torn, or shaven. All volunteer tree seedlings (ficus, bischofia, schefflera, etc.) shall be removed from the remaining "boots" or "thatch" by cutting or pulling.

3.5.12 All debris shall be collected regularly and disposed of at authorized dumping or recycling sites.

3.5.13 Tree Replacement. Removal of damaged trees and/or tree replacements or new plantings shall be completed in accordance with industry standards. New trees shall be maintained and guaranteed for a one (1) year period. Any tree that has been replaced and dies within the guarantee period will be replaced by the Contractor at no cost to the Town, no later than thirty (30) days after notification by the Town.

3.5.14 Sea grapes and hardwood on walking path as well as in other areas are to be trimmed following FDEP guidelines for sea grape trimming.

3.5.15 Address requirements for Dune, walking path and hardpack, if any.

3.6. SCOPE OF WORK – FERTILIZATION

3.6.1 FERTILIZER TYPES

3.6.1.1 The fertilizer to be used on all landscape material including turfgrass, hedges, shrubs, ground covers, palms, and hardwood trees, with the exception of annuals, ferns, orchids, or other species sensitive to granular fertilizers, shall be in granular form and have a 2-1-3 or 4-1-6 ratio of N, P, and K (i.e., “Palm Special” 8-4-12 or 8-2-12), with the nitrogen and potassium in the slow-release form, preferably sulfur-coated. Fertilizer mix shall also contain magnesium sulfate (at least 4%) and micronutrients, specifically manganese sulfate (at least 1%), chelated iron (at least 1%), and trace amounts (less than 1%) of copper and zinc in the sulfate form, and boric acid.

3.6.1.2 Fertilizer for annuals, ferns, orchids, or other species sensitive to granular fertilizer shall be a slow-release resin-coated product containing an N, P, and K ratio of 1-1-1 (i.e., Osmocote or Nutricote).

3.6.1.3 If specific nutritional deficiencies occur, specific products shall be used as needed to correct deficiencies. Such products may include sulfur/potassium/magnesium products (i.e. Sul-Po-Mag or K-Mag), chelated iron (i.e. Sequestrene 138), micronutrient mix (i.e. Fer-A-Gro or Micro-Mix) or soluble products (i.e. Peter’s 20-20-20). Rates, frequencies, and application methods shall be determined based upon specific plant needs and product requirements.

3.6.2 FERTILIZATION FREQUENCY

3.6.2.1 All landscaped areas shall be fertilized four (4) times per year in February, May, August, and November.

3.6.2.2 Annuals shall be fertilized at half-rates, two (2) times during each seasonal change-out, once at the time of planting and again half-way through the growing season.

3.6.2.3 Products used to correct nutritional deficiencies shall be applied at the specified rates and frequencies for the specific plant and deficiency.

3.6.3 FERTILIZER RATES

3.6.3.1 Mixed plantings of turfgrass, hedges, shrubs, ground covers, palms and hardwood trees shall be fertilized with the product specified in 6.1.1, above, at the rate of 12.5 pounds of product per 1,000 square feet of landscaped area.

3.6.3.2 All free-standing palms shall be fertilized with the product recommended in 6.1.1, above, at the rate of 15 pounds of product per 1,000 square feet.

3.6.3.3 Resin-coated fertilizer shall be applied at label rates as specified for the intended plant species.

3.6.3.4 Products used to correct nutritional deficiencies shall be mixed and applied according to label directions for the specific purpose identified.

3.6.4 APPLICATION METHODS

3.6.4.1 Fertilizer for all plant material except large expanses of turfgrass shall be broadcast by hand on the ground or in the planter's underneath plant canopies prior to mulch applications. Fertilizer application shall begin at two (2) to six (6) inches away from trunks/crowns of trees and shrubs and continue out to the dripline of the plants. Fertilizer shall be evenly distributed on the soil surface, not applied in rings or mounds. Granular fertilizer shall not be allowed to accumulate on any plant leaves, in plant crowns, or at leaf bases.

3.6.4.2 Turfgrass fertilizer shall be applied with a rotary spreader after dew and irrigation water has dried from the leaves.

3.6.4.3 Fertilizer for ferns, orchids, annuals or other species sensitive to granular fertilizer shall be broadcast on the soil surface beneath the plants.

3.6.4.4 All excess fertilizer shall be swept, blown, vacuumed, or hosed off of parking lots, driveways, sidewalks, etc., immediately after application, so as to avoid staining.

3.6.4.5 Irrigation shall be set to run through one (1) complete cycle immediately after granular fertilizer application. Contractor must notify the Town when fertilizing in order to coordinate irrigation appropriately. Irrigation is to be performed by Contractor.

3.7. SCOPE OF WORK – PEST/DISEASE CONTROL

3.7.1 GENERAL PRACTICES

3.7.1.1 Pest control shall be implemented on an as-needed basis only as part of an Integrated Pest Management (IPM) program. Contractor shall inspect all areas of the landscape at least one (1) time per month for early detection of actual or potential pest and/or disease infestations which may require treatment.

3.7.1.2 Contractor shall accurately identify any pest, disease, or weed species and determine whether or not chemical treatment is required. If so, it shall be treated with the most appropriate selective pesticide following all pesticide label directions. All pesticides are to be applied in a professional manner in compliance with and in accordance with all State, County, Town and applicable laws and regulations pertaining to the handling and usage of hazardous materials. Pesticides must be pre-approved by the Town prior to use.

3.7.2 TURFGRASS PESTS/DISEASES

3.7.2.1 The most common potential pests of St. Augustine turfgrass include chinch bugs, sod webworms, and grubworms, all of which can usually be effectively controlled with

readily available pesticide products. Repeat applications shall be made at the recommended rates and frequencies, as needed to obtain complete pest control.

3.7.2.2 Fire ant control in turfgrass and shrub areas may be necessary as often as one (1) time per month, using fire ant baits, broadcast in the vicinity of, but not on top of, each nest.

3.7.2.3 Fungicide treatments for turfgrass shall be provided on an as-needed basis. Product selection, application rates, and frequencies shall be determined and pre-approved by the Town after diagnosis, and repeat applications shall be made at the recommended rates and frequencies, as needed to obtain complete disease control.

3.7.2.4 Pre-emergent weed treatment in St. Augustine turf areas using Atrazine shall be provided in the fall months when weather conditions (reduced temperatures) permit. Follow-up post-emergent treatments using Atrazine or another approved product for broadleaf weed control in St. Augustine grass shall be made as needed.

3.7.2.5 Pre- and post-emergent turf weed control treatments for grasses and hedges shall be provided on an as-needed basis, using the most appropriate products, as directed on product labels.

3.7.3 TREE, PALM, AND SHRUB PESTS/DISEASES

3.7.3.1 Common pests of shrubs, such as insects and mites, shall be properly identified and treated with the most appropriate pesticide following all label directions. Follow-up treatments shall be provided as needed to completely control the infestations.

3.7.3.2 Snail bait shall be broadcast in shrub beds or sprayed on the foliage of susceptible plants (mostly foliage plants) on an as-needed basis.

3.7.3.3 Fungicide treatments shall be provided on an as-needed basis. Product selection, application rates, and frequencies must be determined after diagnosis.

3.7.3.4 Pre-emergent weed treatment in established shrub beds using Ronstar (Oxadiazon) or Surflan (Oryzalin) or a similar material may be used 1 to 2 times per year during the summer and fall months to control heavy seed-germinated weed infestations. These products shall be applied according to label directions immediately following mechanical weed control.

3.7.3.5 Round-Up (Glyphosate) herbicides are prohibited and may not be used for post-emergent weed control in shrub beds, driveways, sidewalks, or other hardscape or landscape areas.

3.8. ADDITIONAL SERVICES

3.8.1 Additional non-routine services may be requested by the Town as provided in the Landscape Maintenance Schedule Price Form, and may include, but are not limited to the following:

- (a) Hurricane/Storm Preparation
- (b) Hurricane/Storm Recovery
- (c) Seasonal Flower Placement
- (d) Event Landscaping
- (e) Sod Replacement
- (f) New Plant Installation
- (g) Tree or Stump Removal
- (h) Straightening or Resetting of Trees
- (i) Tree Relocation
- (j) Athletic Field Maintenance
- (k) Public Works' Miscellaneous jobs
- (l) Holiday and Special Events (setup and cleanup)

3.8.2 Price Bid Schedule Form – Hurricane/Storm Preparation and Recovery

During periods in which any portion of Miami-Dade County is designated by the National Oceanic and Atmospheric Administration's National Hurricane Center as being under a Tropical Storm Watch or greater, the Town may provide notification to the Contractor to perform miscellaneous tasks required by the Town, in preparation for the weather event. Landscape Contractor must be available 24/7 during storm preparation. Landscape Contractor must be available for storm recovery efforts.

The contractor shall handle debris management activities in the Town in accordance with applicable regulations of the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHWA), Natural Resources Conservation Services (NRC), South Florida Water Management District (SFWMD), and the Florida Department of Environmental Protection (FDEP).

3.8.3 The contractor must operate their own storage and operation site within a thirty (30) mile radius from the Town of Surfside Town Hall, 9293 Harding Ave, Surfside, Florida, within sixty (60) days of award of contract. No storage will be permitted on Town premises. Limited space for storage may be granted by the Town which may be utilized for limited storage and staging needs. All trash shall be removed off-site daily. No dumpsters shall be stored within Town limits.

END OF THIS SECTION

SECTION 4
PROPOSAL FORM PACKAGE

As provided in the RFP, the following items must be attached to this Proposal:

FORMS	STATUS
Form 1 – Proposal Form Package Acknowledgement	<input type="checkbox"/>
Form 2A. Proposer’s Certification (if Company or Corporation)	<input type="checkbox"/>
Form 2B. Proposer’s Certification (if Partnership)	<input type="checkbox"/>
Form 3. Single Execution Affidavits	<input type="checkbox"/>
Form 4. Dispute Disclosure	<input type="checkbox"/>
Form 5. Certification Regarding Debarment, Suspension, & Other Responsibility Matters Primary Covered Transactions	<input type="checkbox"/>
Form 6. Proposer’s Qualifications Survey	<input type="checkbox"/>
Form 7. Statement of Qualifications Checklist	<input type="checkbox"/>
Form 8A. Price Submittal Schedule Form – General Monthly Maintenance	<input type="checkbox"/>
Form 8B. Price Submittal Schedule Form – On Demand Additional Services	<input type="checkbox"/>
Form 8C. Price Submittal Schedule Form – Hurricane/Storm Preparation & Recovery Services	<input type="checkbox"/>
Form 9. Reference List	<input type="checkbox"/>
Form 10. Federally Required Clauses Affidavit	<input type="checkbox"/>

FORM 1
PROPOSAL FORM PACKAGE ACKNOWLEDGEMENTS

I hereby propose to furnish the goods and services specified in the Request for Proposals, RFp No. 2020-07. I agree that my proposal will remain firm for a period of 180 days after opened by the Town in order to allow the Town adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the Firm named as the Proposing Firm and that said Firm is ready, willing, and able to perform if awarded the Agreement.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal; no officer, employee or agent of the Town of Surfside or any other proposer has an interest in said proposal. Furthermore, I certify that the undersigned executed this Proposal Form with full knowledge and understanding of matters therein contained and was duly authorized.

I further certify that the Proposer acknowledges receipt of all Addenda issued by the Town in connection with the RFP (Check the box next to each addendum received).

_____ Addendum 1	_____ Addendum 6
_____ Addendum 2	_____ Addendum 7
_____ Addendum 3	_____ Addendum 8
_____ Addendum 4	_____ Addendum 9
_____ Addendum 5	_____ Addendum 10

Attached hereto are the following forms/documents which form a part of this proposal:

- | | |
|----------|--|
| Form 1. | Proposal Form Package Acknowledgement. |
| Form 2A. | Proposer's Certification (if Company or Corporation) |
| Form 2B. | Proposer's Certification (if Partnership) |
| Form 3. | Single Execution Affidavits |
| Form 4. | Dispute Disclosure |
| Form 5. | Certification Regarding Debarment, Suspension, & Other Responsibility Matters Primary Covered Transactions |
| Form 6. | Proposer's Qualifications |
| Form 7. | Statement of Qualifications Checklist |
| Form 8A. | Price Submittal Schedule Form – General Monthly Maintenance Services |
| Form 8B. | Price Submittal Schedule Form – On Demand Additional Services |
| Form 8C. | Price Submittal Schedule Form – Hurricane/Storm Preparation & Recovery Services |
| Form 9. | Reference List |
| Form 10. | Federally Required Clauses Affidavit |

FORM 3
SINGLE EXECUTION AFFIDAVITS
THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

THIS FORM COMBINES SEVERAL AFFIDAVIT STATEMENTS TO BE SWORN TO BY THE PROPOSER OR BIDDER AND NOTARIZED BELOW. IN THE EVENT THE PROPOSER OR BIDDER CANNOT SWEAR TO ANY OF THESE AFFIDAVIT STATEMENTS, THE PROPOSER OR BIDDER IS DEEMED TO BE NON-RESPONSIBLE AND IS NOT ELIGIBLE TO SUBMIT A PROPOSAL/BID. THESE SINGLE EXECUTION AFFIDAVITS ARE SUBMITTED TO THE TOWN OF SURFSIDE AND ARE STATEMENTS MADE:

By: _____

For (Name of Proposing or Bidding Entity): _____

Whose business address is: _____

And (if applicable) its Federal Employer Identification Number (FEIN) is: _____

(if the entity does not have an FEIN, include the Social Security Number of the individual signing this sworn statement. SS#: _____)

Americans with Disabilities Act Compliance Affidavit

The above named firm, corporation or organization is in compliance with and agrees to continue to comply with, and assure that any subcontractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

- The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 USC 12101-12213 and 47 USC Sections 225 and 661 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.
- The Florida Americans with Disabilities Accessibility Implementation Act of 1993, Section 553.501-553.513, Florida Statutes:
- The Rehabilitation Act of 1973, 29 USC Section 794;
- The Federal Transit Act, as amended 49 USC Section 1612;
- The Fair Housing Act as amended 42 USC Section 3601-3631.

Proposer Initials

Public Entity Crimes Affidavit

I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any

other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.

I understand that “convicted” or “conviction” as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, and partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement, which I have marked below, is true in relations to the entity submitting this sworn statement.

(INDICATE WHICH STATEMENT APPLIES.)

- Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing

Officer of the State of Florida , Division of Administrative Hearings and the final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

I understand that the submission of this form to the contracting officer for the public entity identified in paragraph 1 above is for that public entity only and that this form is valid through December 31 of the calendar year in which it is filed. I also understand that I am required to inform the public entity prior to entering into a contract in excess of the threshold amount provided in Section 287.017, Florida Statutes for category two of any change in the information contained in this form.

Proposer Initials

No Conflict of Interest or Contingent Fee Affidavit

Proposer warrants that neither it nor any principal, employee, agent, representative nor family member has paid or will pay any fee or consideration that is contingent on the award or execution of a contract arising out of this solicitation. Proposer also warrants that neither it nor any principal, employee, agent, representative nor family member has procured or attempted to procure this contract in violation of any of the provisions of the Miami-Dade County and Town of Surfside conflict of interest or code of ethics ordinances. Further, Proposer acknowledges that any violation of these warrants will result in the termination of the contract and forfeiture of funds paid or to be paid to the Proposer should the Proposer be selected for the performance of this contract.

Proposer Initials

Business Entity Affidavit

Proposer hereby recognizes and certifies that no elected official, board member, or employee of the Town of Surfside (the " Town") shall have a financial interest directly or indirectly in this transaction or any compensation to be paid under or through this transaction, and further, that no Town employee, nor any elected or appointed officer (including Town board members) of the Town, nor any spouse, parent or child of such employee or elected or appointed officer of the Town, may be a partner, officer, director or proprietor of Proposer or Vendor, and further, that no such Town employee or elected or appointed officer, or the spouse, parent or child of any of them, alone or in combination, may have a material interest in the Vendor or Proposer. Material interest means direct or indirect ownership of more than 5% of the total assets or capital stock of the Proposer. Any exception to these above described restrictions must be expressly provided by applicable law or ordinance and be confirmed in writing by Town. Further, Proposer recognizes that with respect to this transaction or bid, if any Proposer violates or is a party to a violation of the ethics ordinances or rules of the Town, the provisions of Miami-Dade County Code Section 2-11.1, as applicable to Town, or the provisions of Chapter 112, part III, Fla. Stat., the Code of Ethics for Public Officers and Employees, such Proposer may be disqualified from furnishing the goods or services for which the bid or proposal is submitted and may be further disqualified from submitting any future bids or proposals for goods or services to Town.

Proposer Initials

Anti-Collusion Affidavit

1. Proposer/Bidder has personal knowledge of the matters set forth in its Proposal/Bid and is fully informed respecting the preparation and contents of the attached Proposal/Bid and all pertinent circumstances respecting the Proposal/Bid;
2. The Proposal/Bid is genuine and is not a collusive or sham Proposal/Bid; and
3. Neither the Proposer/Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including Affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Proposer/Bidder, firm, or person to submit a collusive or sham Proposal/Bid, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer/Bidder, firm, or person to fix the price or prices in the attached Proposal/Bid or of any other Proposer/Bidder, or to fix any overhead, profit, or cost element of the Proposal/Bid price or the Proposal/Bid price of any other Proposer/Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Town or any person interested in the proposed Contract.

Proposer Initials

Scrutinized Company Certification

1. Proposer certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Town may immediately terminate the Agreement that may result from this RFP at its sole option if the Proposer or its subcontractors are found to have submitted a false certification; or if the Proposer, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
2. If the Agreement that may result from this RFP is for more than one million dollars, the Proposer certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. pursuant to Section 287.135, F.S., the Town may immediately terminate the Agreement that may result from this RFP at its sole option if the Proposer, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Proposer, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
3. The Proposer agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement that may result from this RFP. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Proposer Initials

Drug-Free Workplace Affidavit

Proposer hereby recognizes that, pursuant to F.S. § 287.087, preference shall be given to businesses with drug-free workplace programs when two bids/proposals are equal with respect to price, quality, and service. Proposer understands that in order to qualify as a drug-free workplace, proposer must:

- a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

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

Based on information and belief, the statement, which I have marked below, is true in relations to the entity submitting this sworn statement.

(INDICATE WHICH STATEMENT APPLIES.)

- The entity submitting this sworn statement is a drug-free workplace and is in full compliance with the requirements set forth under F.S. § 287.087.

- The entity submitting this sworn statement is not a drug-free workplace.

Proposer Initials

Town Non-Discrimination Requirements Affidavit

Proposer understands that pursuant to Section 3-1.1 of the Code of the Town of Surfside, the Town will not enter into or award a contract to an entity engaged in a boycott.

Proposer understands that “Boycott” as defined under Section 3-1.1 of the Code of the Town of Surfside means to blacklist, divest from, or otherwise refuse to deal with a nation or country, or to

blacklist or otherwise refuse to deal with a person or entity when the action is based on race, color, national origin, religion, sex, gender identity, sexual orientation, marital or familial status, age, or disability in a discriminatory manner. The term boycott does not include a decision based upon business or economic reasons, or boycotts, embargoes, trade restrictions, or divestments that are specifically authorized or required by federal law or state law.

Proposer certifies that it is not engaged in a boycott, and is in full compliance with Section 3-1.1 of the Code of the Town of Surfside.

Proposer Initials

Acknowledgment, Warranty, and Acceptance

1. Contractor warrants that it is willing and able to comply with all applicable state of Florida laws, rules and regulations.
2. Contractor warrants that it has read, understands, and is willing to comply with all requirements of **RFP No. 2020-07** and any addendum/addenda related thereto.
3. Contractor warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the Town Commission or Town Manager, as applicable.
4. Contractor warrants that all information provided by it in connection with this Proposal is true and accurate.

Proposer Initials

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

ACKNOWLEDGMENT

State of Florida
County of _____

On this _____ day of _____, 20____, before me the undersigned, personally appeared _____, whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

Witness my hand and official seal:

Notary Public (Print, Stamp, or Type as Commissioned)

- _____ Personally known to me; or
- _____ Produced identification (Type of Identification: _____)
- _____ Did take an oath; or
- _____ Did not take an oath

**FORM 4
DISPUTE DISCLOSURE**

Answer the following questions by placing an “X” after “Yes” or “No”. If you answer “Yes”, please explain in the space provided, or on a separate sheet attached to this form.

1. Has your firm or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulations or any other regulatory agency or professional associations within the last five (5) years?

YES _____ NO _____

2. Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES _____ NO _____

3. Has your firm had against it or filed any requests for equitable adjustment, contract claims, Bid protests, or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES _____ NO _____

If yes, state the nature of the request for equitable adjustment, contract claim, litigation, or protest, and state a brief description of the case, the outcome or status of the suit and the monetary amounts of extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation of falsification of facts shall be cause for forfeiture of rights for further consideration of this Proposal or Bid for the Town of Surfside.

Signature

Print Name & Title

Sworn to and subscribed before me this _____ day _____, 20_____.

Personally known

OR

Produced identification

Type of identification

Notary Public – State of _____
My commission expires: _____

Printed, typed or stamped commissioned name of notary public

FORM 5
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
PRIMARY COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

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

- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this Statement of Qualifications.

Business Name _____

Date _____

By: _____
Signature of Authorized Representative

Name and Title of Authorized Representative

FORM 6
PROPOSER'S QUALIFICATIONS SURVEY

NOTE: This statement of Proposer's Qualification must be completely filled out, properly executed and returned as part of your Proposal.

[Provide documentation evidencing the experience of the proposer and demonstrating that the proposer has successfully provided services similar to those specified herein to other agencies of similar size and needs as the Town. The proposer firm shall be currently engaged in landscaping and maintenance services on a full time basis and shall have been in existence and continuous operation providing these services for a minimum of five (5) years]

1. List the true, exact and proper names of the company, partnership, corporation, and trade or fictitious name under which you do business and principals by names and titles:

Name of Firm: _____

Address: _____

Principals: _____ Titles: _____

2. a. Are you licensed, as may be required, in the designated area(s) of Miami-Dade County, Florida?

YES _____ NO _____

- b. List Principals Licensed:

Name(s): _____ Title: _____

Remarks: _____

3. How long has your Firm been in business and so licensed? _____

4. If Proposer is an individual, corporation, company or a partnership, answer the following:

a. Date of Organization _____

b. Name, address and ownership units of all directors, officers, members, principals or partners:

Form 6 – Proposer’s Qualifications Survey (continued)

- c. State whether general or limited partnership: _____
- d. State whether a corporation or company _____. Date and State of incorporation_____.

If Proposer is other than an individual, corporation, company or partnership, describe the organization and give the name and address of principals.

5. If Proposer is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.

6. How many years has your firm been in business under its present business name?

a. Under what other former names has your firm operated?

b. Is the firm or its principals now or in the past five (5) years been involved as a defendant in litigation concerning the performance of your Firm’s services or operations? If so list:

7. a. List the pertinent experience of the key individuals of your Firm (continue on insert sheet, if necessary).

b. State the name of the individual(s) who will have personal supervision and key roles for the Services:

Form 6 – Proposer’s Qualifications Survey (continued)

8. List name and title of persons in your Firm who are authorized to enter into an Agreement with the Town of Surfside, Florida for the proposed Services should your Firm be the successful Proposer.

Name _____

Title _____

10. Describe your Firm's experience in providing services to other municipalities or governmental agencies similar to the services to be provided herein.

Attach additional sheets if necessary.

FORM 7
STATEMENT OF QUALIFICATIONS CHECKLIST

Proposer Name:

Company Name:

Mailing Address:

City, State, Zip Code:

Telephone:

Fax:

Mark all of the services the firm is qualified to perform with an "X" below:

Comprehensive Landscape Maintenance

- Irrigation
- Mowing
- Edging and Trimming
- Shrub Pruning
- Mulching
- Weed Control
- Tree and Palm Pruning
- Fertilization
- Pest Scouting and Treatment
- Other _____

Additional Services

- Hurricane/Storm Preparation
- Hurricane/Storm Recovery
- Seasonal Flower Placement
- Event Landscaping
- Sod Replacement
- New Plant Installation
- Tree or Stump Removal
- Straightening or Resetting of Trees
- Tree Relocation
- Athletic Field Maintenance
- Public Works' Miscellaneous Jobs
- Holiday and Special Events (setup and cleanup)
- Other _____

FORM 8A
PRICE SUBMITTAL SCHEDULE FORM
GENERAL MONTHLY MAINTENANCE SERVICES



Town of Surfside
 Price Submittal Schedule Form
 General Monthly Maintenance
 RFP # _____

NOTE: The quantities shown in this Bid Form are estimates only! They may vary significantly from the actual quantities ordered by the Town. Payment shall be for the units ordered, placed, and accepted by the Town. The following work consists of furnishing all labor, materials, supplies equipment, tools, transportation and supervision necessary to perform and maintain the Town's landscape maintenance needs for Town facilities and Public Right of Way in accordance with the Performance Standards, Technical Specifications and Scope of Services detailed herein. Price must be **TYPED**.

Item Number	Item Description / Location	Quantity (Times per Month)	Total Months	Cost (Cost per each time)	Total (Total cost per year)
1.0.0	<u>Park and Recreation Facilities</u>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>
1.1.1	Town of Surfside Community Center <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
1.1.2	Veterans Park and Tennis Center <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
1.1.3	96th Street Park <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
1.1.4	Hawthorne Tot Lot <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
1.1.5	Dog Park - Surfside Paws Up Park & Lift Station <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
1.1.6	Community Garden & Lift Station <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
2.0.0	<u>Parking Lots</u>	<i>leave blank</i>	<i>leave blank</i>	<i>leave blank</i>	<i>leave blank</i>
2.0.1	Abbott Parking Lot <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
2.0.2	94th Street Parking Lot <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
2.0.3	Town Hall Parking Lot <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
2.0.4	93rd Street Parking Lot <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
2.0.5	95th Street Parking Lot <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
2.0.6	Collins Avenue Parking Lot <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
3.0.0	<u>Right of Way</u>	<i>leave blank</i>	<i>leave blank</i>	<i>leave blank</i>	<i>leave blank</i>
3.1.1	Beach Ends <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 General Monthly Maintenance
 RFP # _____

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Item Number	Item Description / Location	Quantity (Times per Month)	Total Months	Cost (Cost per each time)	Total (Total cost per year)
3.1.2	Street Ends <i>Maintenance of all sod, hedges and trees as needed</i>	2	12	\$	\$
3.1.3	Hardpack / Walking Path <i>Rake leaves and loose vegetation from perimeters. Control perimeters as needed</i>	1	12	\$	\$
3.1.4	Harding Avenue Roadway (Downtown Surfside) <i>Maintenance of all hedges and trees as needed</i>	1	12	\$	\$
3.1.5	All Right of Way (ROW), roundabouts and medians <i>Maintenance of all sod, hedges and trees as needed - varies per location</i>	2	12	\$	\$
Total Cost of Yearly General Maintenance Landscape Services		<i>leave blank</i>	<i>leave blank</i>	<i>leave blank</i>	\$

The undersigned attests to his/her authority to submit this bid and to bind the firm herein named to performed as per contract, if the firm is awarded the contract by thru Town of Surfside. The undersigned further certifies that he/she has read the invitation to Bid relating to this request and this bid is submitted with full knowledge and understanding of the requirements and time constraints noted herein. By signing this form, the proposer hereby declares that this proposal is made without collusion with any other person or entity submitting a proposal pursuant to this ITB.

Authorized Signatory: _____

Executed by: _____

(Type or print name)

Title: _____

for (Company): _____

FORM 8B
PRICE SUBMITTAL SCHEDULE FORM
ON DEMAND ADDITIONAL SERVICES



Town of Surfside
 Price Submittal Schedule Form
 On Demand Service Section (This is not included in monthly maintenance)
 RFP # _____

NOTE: The quantities shown in this Bid Form are estimates only! They may vary significantly from the actual quantities ordered by the Town. Payment shall be for the units ordered, placed, and accepted by the Town. The following work consists of furnishing all labor, materials, supplies equipment, tools, transportation and supervision necessary to perform and maintain the Town's landscape maintenance needs for Town facilities and Public Right of Way in accordance with the Performance Standards, Technical Specifications and Scope of Services detailed herein. Price must be **TYPED**.

Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
1.0.0	<u>PERSONNEL</u>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>
1.1.1	One Landscape Supervisor	8	hours	\$	\$
1.1.2	One Landscape Laborer	8	hours	\$	\$
1.1.3	One Irrigation Technician	8	hours	\$	\$
1.1.4	One Dump Truck Operator	8	hours	\$	\$
1.1.5	One Equipment Operator	8	hours	\$	\$
1.1.6	One Operation Manager	8	hours	\$	\$
1.1.7	One Licensed Arborist	8	hours	\$	\$
2.0.0	<u>EQUIPMENT</u>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>
2.1.1	One Dump Truck (less than 10 CY)	1	day	\$	\$
2.1.2	One Dump Truck (less than 10 CY)	1	day	\$	\$
2.1.3	One Bucket Truck	1	day	\$	\$
2.1.4	One Backhoe (Combination loader)	1	day	\$	\$
2.1.5	One Skid Steer with attachments	1	day	\$	\$
2.1.6	One Chipper	1	day	\$	\$
2.1.7	One Tree Grinder	1	day	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 On Demand Service Section (This is not included in monthly maintenance)
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
2.1.8	One Water Tank (500 Gal.)	1	day	\$	\$
2.1.9	24" x 6" Wide Trencher	1	day	\$	\$
2.1.10	Grapple Loader (30 Cubic Yard capacity, equipment only)	1	day	\$	\$
3.0.0	<u>Services and Materials</u>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>	<i>Leave Blank</i>
3.1.1	Meril Soil Drench for Royal Palms (One application including follow up per year)	1	each application	\$	\$
3.1.2	Cygon Foliar Spray for Royal Palms (One application including follow up per year)	1	each application	\$	\$
3.1.3	Phoenix daetylifera/Pheoniz canariensis Maintenance (Three applications per year)	3	each application	\$	\$
3.1.4	Rate for Topsoil (70/30 Mix) delivered and installed in place	1	cubic yard	\$	\$
3.1.5	Rate for Lawn Sand delivered and installed in place	1	cubic yard	\$	\$
3.1.6	Palm OTC Injection	1	each application	\$	\$
3.1.7	Date Palm trunk drench treatment for thielaviopsis paradoxa	1	each application	\$	\$
3.1.8	Solid St. Augustine "Floritam" Sod in place for lawn repair	1	square foot	\$	\$
3.1.9	500 SQFT Palette of St. Augustine "Floritam" sod delivered and installed per Town direction	1	palette	\$	\$
3.1.10	Undyed Shredded Florimulch, Grade "A" or better delivered and installed in place	1	cubic yard	\$	\$
3.1.11	One Skid Steer loader with Operator	1	day	\$	\$
3.1.12	One Backhoe Combination with Operator	1	day	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 On Demand Service Section (This is not included in monthly maintenance)
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
3.1.13	Foliar Spray to Combat Ficus Whitefly (4'-6' height hedge)	1	linear feet	\$	\$
3.1.14	Foliar Spray to Combat Ficus Whitefly (7'-12' height hedge)	1	linear feet	\$	\$
3.1.15	Drench to Combat Ficus Whitefly (4'-6' height hedge)	1	linear feet	\$	\$
3.1.16	Drench to Combat Ficus Whitefly (7'-12' height hedge)	1	linear feet	\$	\$
3.1.17	Drench to Combat Ficus Whitefly (Tree up to 25' Height)	1	each application	\$	\$
3.1.18	Drench to Combat Ficus Whitefly (Tree 25' - 35' Height)	1	each application	\$	\$
3.1.19	Drench to Combat Ficus Whitefly (Tree 35' and above)	1	each application	\$	\$
3.1.20	Micro-injectable systemic insecticide to combat whitefly (Tree up to 65" DBH)	1	Per injection	\$	\$
3.1.21	Micro-injectable systemic insecticide to combat whitefly (Tree 65" to 85" DBH)	1	Per injection	\$	\$
3.1.22	Micro-injectable systemic insecticide to combat whitefly (Tree above 85" DBH)	1	Per injection	\$	\$
3.1.23	Systemic Basal Bark/Root Application (Tree up to 65" DBH)	1	Per application	\$	\$
3.1.24	Systemic Basal Bark/Root Application (Tree 65" to 85" DBH)	1	Per application	\$	\$
3.1.25	Systemic Basal Bark/Root Application (Tree above 85" DBH)	1	Per application	\$	\$
3.1.26	Plant 3 Gal. Clusia guttifera (Small-leaf Clusia)	1	each installation	\$	\$
3.1.27	Plant 7 Gal. Clusia guttifera (Small-leaf Clusia)	1	each installation	\$	\$
3.1.28	Plant 1 Gal. Arachis glabrata (Perennial Peanut)	1	each installation	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 On Demand Service Section (This is not included in monthly maintenance)
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
3.1.29	Plant 3 Gal. Chrysobalanus icaco "Red Tip" (Red-Tip Cocoplum)	1	each installation	\$	\$
3.1.30	Plant 3 Gal, Chrysobalanus "Horizontalis" (Horizontal Cocoplum)	1	each installation	\$	\$
3.1.31	Plant 3 Gal. Coccoloba Uvifera (Sea grape)	1	each installation	\$	\$
3.1.32	Plant 3 Gal. Hamelia Patens (Firebush)	1	each installation	\$	\$
3.1.33	Plant 3 Gal. Conocarpus erectus (Green Buttonwood)	1	each installation	\$	\$
3.1.34	Plant 3 Gal. Conocarpus erectus "Sericeous" (Silver Buttonwood)	1	each installation	\$	\$
3.1.35	Plant 1 Gal. Dianella tasminica "Variegata" (Var. Blueberry Flax Lily)	1	each installation	\$	\$
3.1.36	Plant 3 Gal. Ficus microcarpa "Green Island" (Green Island Ficus)	1	each installation	\$	\$
3.1.37	Plant 3 Gal., Hamelia Patens "Compacta (Dwarf Firebush)	1	each installation	\$	\$
3.1.38	Plant 3 Gal. Ixora "Nora Grant" (Pink Ixora)	1	each installation	\$	\$
3.1.39	Plant 3 Gal Jasminum volubile (Wax Jasmine)	1	each installation	\$	\$
3.1.40	Plant 25 Gal. Jatropha integerrima (Jatropha)	1	each installation	\$	\$
3.1.41	Plan 3 Gal. Microsorium scolopendrium (Wart Fern)	1	each installation	\$	\$
3.1.42	Plant 3 Gal. Muhlenbergia capillaris (Muchly Grass)	1	each installation	\$	\$
3.1.43	Plant 3 Gal. Schefflera arboricola "Dazzle"	1	each installation	\$	\$
3.1.44	Plant 3 Gal. Tripsacum dactylifera (Fakahatchee Grass)	1	each installation	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 On Demand Service Section (This is not included in monthly maintenance)
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
3.1.45	Plant 3 Gal. Tripsacum floridana (Florida Gamma Grass)	1	each installation	\$	\$
3.1.46	Plant 7 Gal. Zamia furfuraces (Cardboard Palm)	1	each installation	\$	\$
3.1.47	Seagrape trimming east of the CCCL line	1	each tree	\$	\$
3.1.48	Remove all from coconut palm with trimming	1	each tree	\$	\$
3.1.49	Material and installation of gravel cover (Surfside Mix)	1	cubic yard	\$	\$
3.1.50	Town of Surfside Community Center pesticide control through pesticide application	1	each application	\$	\$
3.1.51	Veterans Park and Tennis Center pesticide control through pesticide application	1	each application	\$	\$
3.1.52	96th Street Park pest control through pesticide application	1	each application	\$	\$
3.1.53	Hawthorne Tot Lot pest control through pesticide application	1	each application	\$	\$
3.1.54	Dog Park - Surfside Paws Up Park pest control through pesticide application	1	each application	\$	\$
3.1.55	Community Garden pest control through pesticide application	1	each application	\$	\$
3.1.56	Abbott Parking Lot pest control through pesticide application	1	each application	\$	\$
3.1.57	94th Street Parking Lot pest control through pesticide application	1	each application	\$	\$
3.1.58	Town Hall Parking Lot pest control through pesticide application	1	each application	\$	\$
3.1.59	93rd Street Parking Lot pest control through pesticide application	1	each application	\$	\$
3.1.60	95th Street Parking Lot pest control through pesticide application	1	each application	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 On Demand Service Section (This is not included in monthly maintenance)
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
3.1.61	Collins Avenue Parking Lot pest control through pesticide application	1	each application	\$	\$
3.1.62	Beach Ends pest control through pesticide application	1	each application	\$	\$
3.1.63	Street Ends pest control through pesticide application	1	each application	\$	\$
3.1.64	Hardpack / Walking Path pest control through pesticide application	1	each application	\$	\$
3.1.65	Harding Avenue Roadway (Downtown Surfside) pest control through pesticide application	1	each application	\$	\$
3.1.66	Right of Way (ROW), roundabouts and medians pest control through pesticide application	1	each application	\$	\$
3.1.67	Stump removal	1	each	\$	\$
3.1.68	Emodea Littoralis "Golden Creeper" 1 gallon	1	each installation	\$	\$
3.1.69	Bursera Simaruba "Gumbo Limbo" 12' ht.	1	each installation	\$	\$
3.1.70	Bursera Simaruba "Gumbo Limbo" 14' to 16' ht. 6'-7' spread	1	each installation	\$	\$

The undersigned attests to his/her authority to submit this bid and to bind the firm herein named to performed as per contract, if the firm is awarded the contract by thru Town of Surfside. The undersigned further certifies that he/she has read the invitation to Bid relating to this request and this bid is submitted with full knowledge and understanding of the requirements and time constraints noted herein. By signing this form, the proposer hereby declares that this proposal is made without collusion with any other person or entity submitting a proposal pursuant to this ITB.

Authorized Signatory: _____

Executed by: _____

(Type or print name)

Title: _____

for (Company): _____

FORM 8C
PRICE SUBMITTAL SCHEDULE FORM
HURRICANE/STORM PREPARATION AND RECOVERY SERVICES



Town of Surfside
 Price Submittal Schedule Form
 Hurricane/Storm Preparation and Recovery
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
1.0.0	<u>EMERGENCY SERVICES</u>	<i>Leave blank</i>	<i>Leave blank</i>	<i>Leave blank</i>	<i>Leave blank</i>
1.1.1	One Landscape Supervisor	8	hours	\$	\$
1.1.2	One Landscape Laborer	8	hours	\$	\$
1.1.3	One Dump Truck Operator	8	hours	\$	\$
1.1.4	One Equipment Operator	8	hours	\$	\$
1.1.5	One Operation Manager	8	hours	\$	\$
2.0.0	<u>EQUIPMENT</u>	<i>Leave blank</i>	<i>Leave blank</i>	<i>Leave blank</i>	<i>Leave blank</i>
2.1.1	One Dump Truck (less than 10 CY)	1	1 day	\$	\$
2.1.2	One Dump Truck (greater than 10 CY)	1	1 day	\$	\$
2.1.3	One Bucket Truck	1	1 day	\$	\$
2.1.4	One Backhoe (Combination loader)	1	1 day	\$	\$
2.1.5	One Front end Loader with operator	1	1 day	\$	\$
2.1.6	One Skid Steer with attachments	1	1 day	\$	\$
2.1.7	One Chipper with operator	1	1 day	\$	\$
2.1.8	One Tub grinder 800 to 1000 HP, including oprator	1	1 day	\$	\$
2.1.9	One Grapple Truck (25 cubic yards or less)	1	1 day	\$	\$



Town of Surfside
 Price Submittal Schedule Form
 Hurricane/Storm Preparation and Recovery
 RFP # _____

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Item Number	Item Description / Location	Quantity	Units	Unit Cost	Total Lne Item Cost
2.1.10	One Grapple Truck (25 cubic yards or more)	1	1 day	\$	\$
2.1.11	One Tub Grinder	1	1 day	\$	\$
3.0.0	<u>Services and Materials</u>	<i>Leave blank</i>	<i>Leave blank</i>	<i>Leave blank</i>	<i>Leave blank</i>
3.1.1	Installation of chain link fence	1	linear feet	\$	\$
3.1.2	Disposal of vegetation debris to landfill	1	cubic yard	\$	\$
3.1.3	Disposal of mulch debis to landfill	1	cubic yard	\$	\$
3.1.4	loading and hauling debris from ROW to Town designated debris management site (within Town Boundaries) estimated 15,000 cubic yard)	1	cubic yard	\$	\$
3.1.5	Disaster Debris Management site debris reduction by chipping/grinding per cubic yard on debris management site	1	cubic yard	\$	\$
3.1.6	Removal of hazardous fallen limbs	1	each tree	\$	\$

The undersigned attests to his/her authority to submit this bid and to bind the firm herein named to performed as per contract, if the firm is awarded the contract by thru Town of Surfside. The undersigned further certifies that he/she has read the invitation to Bid relating to this request and this bid is submitted with full knowledge and understanding of the requirements and time constraints noted herein. By signing this form, the proposer hereby declares that this proposal is made without collusion with any other person or entity submitting a proposal pursuant to this ITB.

Authorized Signatory: _____

Executed by: _____

(Type or print name)

Title: _____

for (Company): _____

**FORM 9
REFERENCE LIST**

**IN ADDITION TO THE INFORMATION REQUIRED ON THIS FORM,
CONTRACTOR TO PROVIDE A MINIMUM OF THREE REFERENCE LETTERS.**

REFERENCE #1

Public Entity Name: _____

Reference Contact Person/Title/Department: _____

Contact Number & Email _____

Public Entity Size/Number of Residents/Square Mileage: _____

**Event(s) Completed (include Name of Project/Event, Date of Event Start/Completion, Details on Size/Scope of
Work/Complexity)** _____

Total Reimbursement Requested from FEMA, State, Insurance or Other Sources: _____

Final Reimbursement (if available) Approved by FEMA, State, Insurance or Other Sources: _____

Is the Contract still Active? Yes _____ **No** _____

REFERENCE #2

Public Entity Name: _____

Reference Contact Person/Title/Department: _____

Contact Number & Email _____

Public Entity Size/Number of Residents/Square Mileage: _____

Event(s) Completed (include Name of Project/Event, Date of Event Start/Completion, Details on Size/Scope of Work/Complexity) _____

Total Reimbursement Requested from FEMA, State, Insurance or Other Sources: _____

Final Reimbursement (if available) Approved by FEMA, State, Insurance or Other Sources: _____

Is the Contract still Active? Yes _____ **No** _____

REFERENCE #3

Public Entity Name: _____

Reference Contact Person/Title/Department: _____

Contact Number & Email _____

Public Entity Size/Number of Residents/Square Mileage: _____

Event(s) Completed (include Name of Project/Event, Date of Event Start/Completion, Details on Size/Scope of Work/Complexity) _____

Total Reimbursement Requested from FEMA, State, Insurance or Other Sources: _____

Final Reimbursement (if available) Approved by FEMA, State, Insurance or Other Sources: _____

Is the Contract still Active? Yes _____ **No** _____

FORM 10
FEDERALLY REQUIRED CLAUSES AFFIDAVIT
THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

THIS PROCUREMENT SHALL CONFORM IN ALL RESPECTS TO THE “FEDERALLY REQUIRED CLAUSES” INCLUDING, BUT NOT LIMITED TO THOSE CLAUSES LISTED BELOW. PROPOSER SHALL WARRANT THAT IT HAS READ, UNDERSTANDS, AND IS WILLING TO COMPLY WITH ALL THE “FEDERALLY REQUIRED CLAUSES” LISTED BELOW. IN THE EVENT THE PROPOSER FAILS TO SWEAR TO ANY PART OF THIS AFFIDAVIT, THE PROPOSER SHALL BE DEEMED TO BE NON-RESPONSIBLE AND IS NOT ELIGIBLE TO SUBMIT A PROPOSAL. THIS AFFIDAVIT IS SUBMITTED TO THE TOWN OF SURFSIDE AND ARE STATEMENTS MADE:

By: _____

For (Name of Proposing or Bidding Entity): _____

Whose business address is: _____

And (if applicable) its Federal Employer Identification Number (FEIN) is: _____

(if the entity does not have an FEIN, include the Social Security Number of the individual signing this sworn statement. SS#: _____)

A. 2 C.F.R. §200.213 - Suspension and debarment

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Proposer Initials

B. 2 C.F.R. §200.317 - Procurements by states

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including sub recipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

Proposer Initials

C. 2 C.F.R. §200.318 - General procurement standards

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Proposer Initials**D. 2 C.F.R. §200.319 - Competition**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations.

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that **prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals**, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Proposer Initials

E. 2 C.F.R. §200.320 - Methods of procurement to be followed

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of

A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

Proposer Initials

F. 2 C.F.R. §200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Proposer Initials

G. 2 C.F.R. §200.322 - Procurement of recovered materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Proposer Initials

H. 2 C.F.R. §200.323 - Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

(e) Reserved

Proposer Initials

I. 2 C.F.R. §200.324 - Federal awarding agency or pass-through entity review

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2)The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

Proposer Initials

J. 2 C.F.R. §200.325 - Bonding requirements

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

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A

“performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Proposer Initials

K. §200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Proposer Initials

L. 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity’s contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity’s own procedures in that area.

1. Remedies.

a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract

terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R.

§ 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with

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

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

- (1) All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- (2) In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- (3) The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (4) In contracts subject to the Davis-Bacon Act, the contracts must also include a provision

for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- (5) The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”** However, for purposes of grant programs where both clauses do apply, FEMA requires the contract clause listed under section 4(b), “Compliance with the Copeland “Anti-Kickback” Act.”

b. “Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives

compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

6. Rights to Inventions Made Under a Contract or Agreement.

a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program**, as FEMA awards under these programs do not meet the definition of “funding agreement.”

b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

(1) “Clean Air Act

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:

(1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

(2) The contract requires the approval of FEMA, regardless of amount.

- (3) The contract is for federally-required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

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

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. Procurement of Recovered Materials.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965)

(codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA- designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

a. The Uniform Rules authorize FEMA to require additional provisions for non- Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. The following provides a contract clause regarding no obligation by the Federal Government:
“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts:
“The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

Proposer Initials

[SIGNATURE PAGE FOLLOWS.]

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

ACKNOWLEDGMENT

State of Florida

County of _____

On this _____ day of _____, 20____, before me the undersigned, personally appeared _____, whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

Witness my hand and official seal:

Notary Public (Print, Stamp, or Type as Commissioned)

_____ Personally known to me; or

_____ Produced identification (Type of Identification: _____)

_____ Did take an oath; or

_____ Did not take an oath

Exhibit "A"

Landscape Maintenance Locations Map

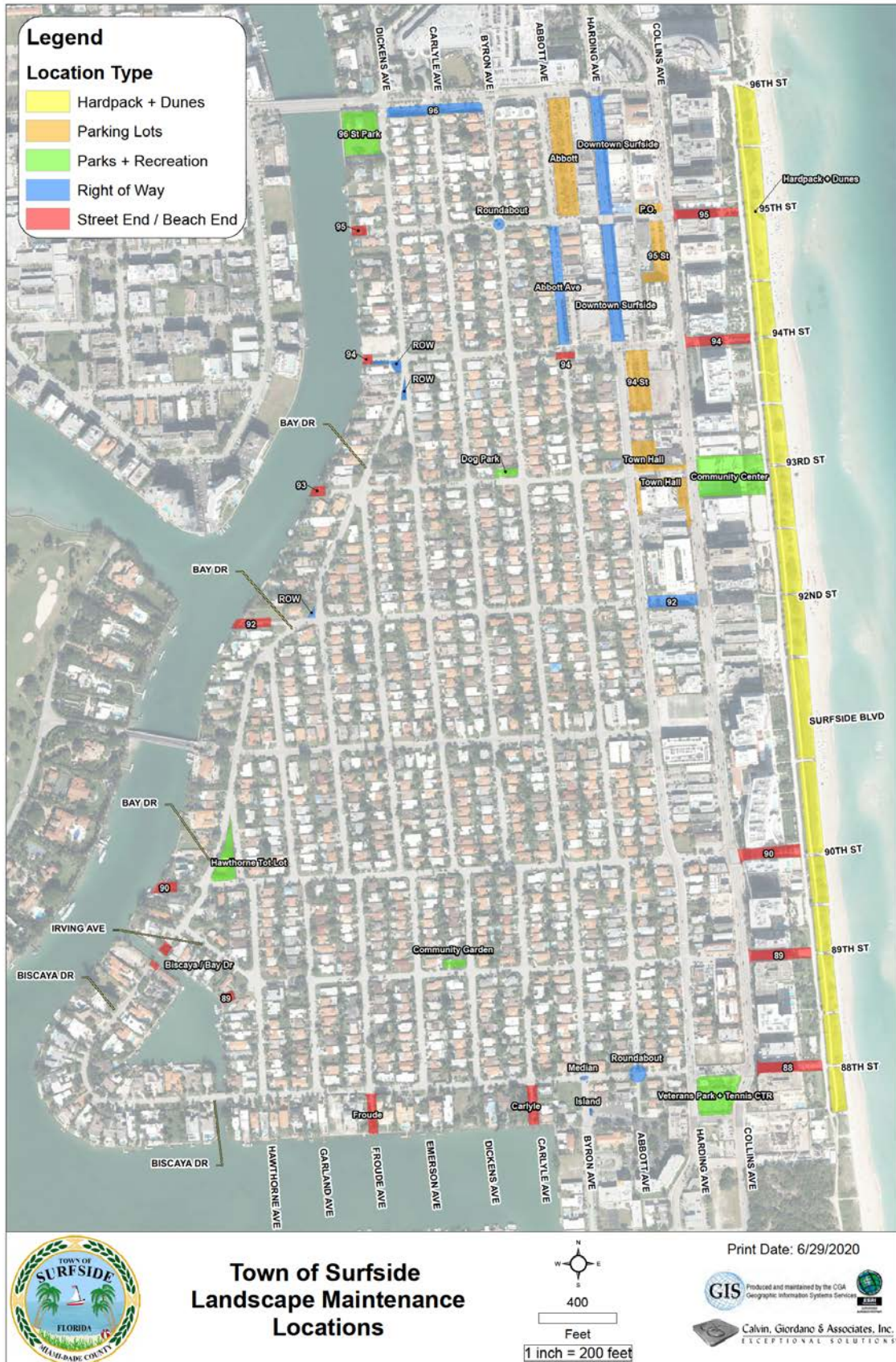


Exhibit "B"
Tree Schedule Inventory



Town of Surfside
Tree Schedule Inventory

RFP # _____

NOTE: This is a Town provided estimate / inventory as of June 2020. All bidders are to field verify quantities prior to submitting pricing.

Tree Disposition Schedule										
Item Number	Item Description / Location	Sabal Palm	Date Palm	Bismarckia Palm	Ribbon Palm	Small Palm	Hedge Screening	Hardwood	Coconut Palm	
1.0.0	Park and Recreation Facilities									
1.0.1	Town of Surfside Community Center	30						18	56	
1.0.2	Veterans Park and Tennis Center		8				YES		8	
1.0.3	96th Street Park					10	YES		13	
1.0.4	Hawthorne Tot Lot	21	1			2		7		
1.0.5	Dog Park - Surfside Paws Up Park							4		
1.0.6	Community Garden					20		3		
2.0.0	Parking Lots									
2.0.1	Abbott Parking Lot					49		28		
2.0.2	94th Street Parking Lot		3			27		15		
2.0.3	Town Hall Parking Lot	6	2	2		20			6	
2.0.4	93rd Street Parking Lot		2			14		5		
2.0.5	95th Street Parking Lot					15	YES			
2.0.6	Collins Avenue Parking Lot					5				
3.0.0	Right of Way									
3.0.1	Beach Ends	18	7					6	9	
3.0.2	Street Ends					32				
3.0.3	Hardpack / Walking Path							80		
3.0.4	Harding Avenue Roadway (Downtown Surfside)	67			22			12		
3.0.5	All Right of Way (ROW), roundabouts and medians	3	17				YES	1	6	
Totals Quantities		145	40	2	22	194	0	179	98	

Exhibit "C"
Sample Agreement

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
NAME OF ENTITY**

THIS AGREEMENT (this “Agreement”) is made effective as of the _____ day of _____, 2020 (the “Effective Date”), by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation, (hereinafter the “Town”), and **NAME OF ENTITY**, a Florida [type of entity], (hereinafter, the “Consultant”).

WHEREAS, the Town issued Request for Proposals (RFP) No. 2020-07 seeking qualified firms for Landscape Maintenance and Related Services, which RFP is incorporated herein by reference; and

WHEREAS, the Consultant will perform services on behalf of the Town, all as further set forth in the **Proposal dated _____, 2020**, attached hereto as Exhibit “A” (the “Services”); and

WHEREAS, the Consultant and Town, through mutual negotiation, have agreed upon a fee for the Services; and

WHEREAS, the Town desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Town agree as follows:

1. Scope of Services.

- 1.1.** Consultant shall provide the Services on a non-exclusive basis as set forth in the Proposal attached hereto as Exhibit “A” and incorporated herein by reference (the “Services”).
- 1.2.** Consultant shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter “Deliverables”) to the Town.

2. Term/Commencement Date.

- 2.1.** The term of this Agreement shall commence on the Effective Date through three (3) years thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, the Town Manager may renew this Agreement for three (3) additional one (1) year periods on the same terms as set forth herein upon written notice to the Consultant.
- 2.2.** Consultant agrees that time is of the essence and Consultant shall complete the Services within the term of this Agreement, unless extended by the Town Manager.

3. Compensation and Payment.

- 3.1.** Compensation for Services provided by Consultant shall be based on the corresponding Unit Pricing for the Services as set forth in Consultant's Fee Schedules, which are attached hereto as Exhibit "B," "C," and "D" and incorporated herein by reference.
- 3.2.** Consultant shall deliver an invoice to Town no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the percentage of work completed for each task invoiced. The Town shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

4. Subconsultants.

- 4.1.** The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Services.
- 4.2.** Consultant may only utilize the services of a particular subconsultant with the prior written approval of the Town Manager, which approval may be granted or withheld in the Town Manager's sole and absolute discretion.

5. Town's Responsibilities.

- 5.1.** Town shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Town, and provide criteria requested by Consultant to assist Consultant in performing the Services.
- 5.2.** Upon Consultant's request, Town shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

6. Consultant's Responsibilities; Representations and Warranties.

- 6.1.** The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Town requests, the Consultant shall at Consultant's sole expense, immediately correct its Deliverables or Services.
- 6.2.** The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Town as an independent contractor of the Town. Consultant further warrants and represents that it has the required knowledge, expertise, and experience to perform the

Services and carry out its obligations under this Agreement in a professional and first class manner.

6.3. The Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

7. Conflict of Interest.

7.1. To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Town.

8. Termination.

8.1. The Town Manager, without cause, may terminate this Agreement upon five (5) calendar days written notice to the Consultant, or immediately with cause.

8.2. Upon receipt of the Town's written notice of termination, Consultant shall immediately stop work on the project unless directed otherwise by the Town Manager.

8.3. In the event of termination by the Town, the Consultant shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4. The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Town, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. Insurance.

9.1. Consultant shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents, and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent.

9.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property

Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

9.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

9.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.1.4. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

9.2. Certificate of Insurance. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

9.3. Additional Insured. Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to

the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

9.4. Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.5. The provisions of this section shall survive termination of this Agreement.

10. Nondiscrimination. During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

11. Attorneys Fees and Waiver of Jury Trial.

11.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and all appellate levels.

11.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

12. Indemnification.

12.1. Consultant shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement.

12.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the Town nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Town is subject to section 768.28, Florida Statutes, as may be amended from time to time.

12.3. The provisions of this section shall survive termination of this Agreement.

13. Notices/Authorized Representatives. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by

registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

14. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. Entire Agreement/Modification/Amendment.

15.1. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. Ownership and Access to Records and Audits.

16.1. Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Consultant during the term of this Agreement (“Work Product”) belong to the Town. Consultant shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

16.2. Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’s performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

16.3. Upon request from the Town’s custodian of public records, Consultant shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- 16.4.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 16.5.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.6.** Any compensation due to Consultant shall be withheld until all records are received as provided herein.
- 16.7.** Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.
- 16.8.** **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

Custodian of Records: Sandra McCready, MMC

**Mailing address: 9293 Harding Avenue
Surfside, FL 33154**

Telephone number: 305-861-4863

Email: smccready@townofsurfsidefl.gov

- 16.9.** Consultant shall comply with the following FEMA records access requirements:
- 16.9.1. The Consultant agrees to provide the Town, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- 16.9.2. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 16.9.3. The Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed pursuant to or in connection with this Agreement.

16.9.4. In compliance with the Disaster Recovery Act of 2018, the Town and the Consultant acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

17. Nonassignability. This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Town Manager. The Town is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Town's area, circumstances and desires.

18. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. Independent Contractor. The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. Compliance with Laws.

20.1. The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, including federal, State of Florida, Miami-Dade County, the Town of Surfside, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

20.2. The Consultant acknowledges that FEMA financial assistance will be used to fund all or a portion of this Agreement. The Consultant will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

21. Waiver. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. Survival of Provisions. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. Prohibition of Contingency Fees. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working

solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Public Entity Crimes Affidavit.** Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
25. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
26. **Conflicts.** In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.
27. **Boycotts.** The Consultant is not currently engaged in, and will not engage in, a boycott, as defined in Section 3-1.1 of the Town of Surfside Code of Ordinances.
28. **Federal Requirements.** Consultant agrees to comply with the contract provisions listed under FHWA-1273 Form, attached hereto Exhibit "E" and incorporated herein by reference, and the following terms and provisions for all federally funded and reimbursable Services provided:
 - 28.1. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.** In accordance with 2 C.F.R. § 200.321, Consultant shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps for the Consultant to take regarding subcontractors must include:
 - 28.1.1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 28.1.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 28.1.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 28.1.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 28.1.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
 - 28.2. **Debarment and Suspension.** The Town and the Consultant are subject to the debarment and suspension regulations set forth under Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000.

28.2.1. This Agreement is a covered transaction for purposes of 2 C.F.R. part 180 and 2 C.F.R. part 3000. As such, Consultant is required to verify that the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

28.2.2. Consultant must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

28.2.3. This certification is a material representation of fact relied upon by the Town. If it is later determined that the Consultant did not comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

28.2.4. Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, sub-part C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

28.3. Procurement of recovered materials. The Town and the Consultant agree to comply with 2 C.F.R. § 200.322:

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

28.4. Methods of procurement to be followed. T

28.5. Davis-Bacon Act.

28.5.1. All transaction regarding this contract shall be done in compliance with the Davis-Bacon Act, 50 U.S.C. 3141-3144 and 3146-3148, and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Consultant shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt 5 as applicable.

28.5.2. Consultant is required to pay wages to laborers at a rate not less than the prevailing wages specified in the a wage determination made by the U.S. Secretary of Labor.

28.5.3. Consultants must pay wages not less than once a week.

28.6. Copeland Anti-Kickback Act.

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

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

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

28.7. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Consultants who apply or bid for an award of \$100,000 or more shall file the required certification attached hereto as Exhibit “E”. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

28.8. Compliance with the Contract Work Hours and Safety Standards Act.

28.8.1. The Consultant or its subcontractors contracting for any part of the Services under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

28.8.2. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which

such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

28.9. Clean Air Act.

28.9.1. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42U.S.C. § 7401 et seq.

28.9.2. The Consultant agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

28.9.3. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 that is financed in whole or in part with Federal assistance provided by FEMA.

28.10. Federal Water Pollution Control Act.

28.10.1. The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

28.10.2. The Consultant agrees to report each violation to the Town, and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

28.10.3. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

28.11. DHS Seal, Logo, and Flags. The Consultant shall not use the Department Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

28.12. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from this Agreement.

28.13. Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

28.14. Change or Modification. To be eligible for FEMA assistance under a FEMA grant or cooperative agreement, the cost of a change, modification, change order, or constructive change must be allowable, allocable, within the scope of the grant or cooperative agreement, and reasonable for the completion of the project scope. Accordingly, the Consultant shall comply with the following:

28.14.1. Without invalidating the Agreement, Town reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to fully and properly complete the project in a satisfactory manner in accordance with the scope of the FEMA grant or cooperative agreement. Any extra or additional work within the scope of this Agreement must be accomplished by means of appropriate Field Orders or Change Orders.

28.14.2. The Agreement Administrator shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the project documents and ordering minor changes in work execution, providing the Field Order involves no change in the Agreement Price or the Agreement Time.

28.14.3. Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders, including all changes resulting in changes in the Agreement Price, or the Agreement Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of Town's Procurement Code, as amended from time to time.

[Remainder of page intentionally left blank. Signature pages follow.]

EXHIBIT “A”
SCOPE OF SERVICES

The Scope of Services are those contained in RFP No. 2020-007 and the Proposal dated _____, 2020, attached hereto and incorporated herein by reference.

EXHIBIT “B”

General Monthly Maintenance Price Schedule

[Insert Consultant’s Price Submittal Schedule Form – General Monthly Maintenance Services]

EXHIBIT “C”

On Demand Additional Services Price Schedule

[Insert Consultant’s Price Submittal Schedule Form – On Demand Additional Service]

EXHIBIT “D”

Hurricane/Storm Preparation & Recovery Services Price Schedule

[Insert Consultant’s Price Submittal Schedule Form – Hurricane/Storm Preparation & Recovery Services]

**Exhibit “E”
FHWA-1273**

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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