REQUEST FOR PROPOSAL (RFP)

Subject: **Emergency and Special Events Catering Services**

RFP #: 2021-12

Due Date/Time: July 01, 2021, 2:30 p.m. Eastern Time

Submit To: City Clerk

City of Wilton Manors

2020 Wilton Drive

Wilton Manors, FL 33305

CITY OF WILTON MANORS
REQUEST FOR PROPOSAL FOR
EMERGENCY AND SPECIAL EVENTS CATERING SERVICES

CALENDAR OF EVENTS

Listed below are important dates and times by which the actions noted must be completed. If the City finds it necessary to change any of these dates or times, the change may be accomplished by addendum. All dates are subject to change.

ACTION	COMPLETION DATE
Issue RFP	June 01, 2021
Deadline for Questions	June 14, 2021, 7:00 a.m.
Response to Questions	June 17, 2021
Deadline for Submitting Proposals	**July 01, 2021, 2:30 p.m.**
Evaluation Committee Training	July 07, 2021
Evaluation Committee Review	July 13, 2021
Select Short List for Presentations	July 13, 2021
Reference Checks	July 20, 2021
Presentation	TBD
Final Ranking and Selection	July 27, 2021
Contract Negotiation	July 29, 2021
City Commission Approval of Contract	August 10, 2021 or later

TABLE OF CONTENTS

Section 1 – Introductory Material 4

Section 2 – Scope of Services 6

Section 3 – Procurement Instructions 12

Section 4 – Review and Evaluation Process 17

Section 5 – General Terms and Conditions 19

Exhibit A

Attachment A – Non-Discrimination Affidavit 27

Attachment B – Domestic Partnership Certification Form 28

City of Wilton Manors Ordinance 2013-0013 29

Attachment C – Non-Debarment Affidavit 31

Attachment D – Drug-Free Workplace Certification 33

Attachment E – Non-Collusive Affidavit 34

Attachment F – Certification Pursuant to Florida Statute 287.135 35

Attachment G – E-verify Form for all Solicitations 36

EXHIBIT A – Federal Regulations 38

EXHIBIT B – Federal Required Contract Provisions 42

EXHIBIT C – FHWA 1273 50

Section 1 – Introductory Material

1.1 STATEMENT OF PURPOSE

The City of Wilton Manors, Florida (City) is seeking proposals from qualified licensed Contractors (CONTRACTOR), to provide Emergency and Special Event Catering Services during emergency events such as natural disasters or other related crises, as well as for special event needs of the City, which services shall be in full accordance with the specifications, terms and conditions contained in this Request for Proposal (RFP).

Contractor and personnel must have all required FEMA and applicable agencies training. The Contractor shall have an excellent understanding of the documentation involved for the reimbursement from FEMA, FHWA, or Other Federal Agencies, and the State relief programs to make the process of cost recovery efficient and accurate. The processes and documentation required will be in strict compliance with FEMA, FHWA, or Other Federal Agencies, and other State relief programs regulations regarding eligibility.

Contractor shall immediately notify the City of any observed or perceived process or practice that may jeopardize the City's ability to secure reimbursement from applicable agencies of the program's cost.

This Proposal is being solicited in accordance with the Procurement Requirements for Federal grants, as provided for in Title 2 Code of Federal Regulations (CFR) Part 200 as detailed in EXHIBIT C of this proposal document as incorporated herein, in order to be eligible for reimbursement under the Public Assistance Program.

Piggybacking Option – The City does not intend to have this contract available for "piggybacking" by other governmental entities without the permission of the awarded contractor .

1.2 CONTRACT TERMS

The initial contract term is for three (3) years. The City will have the option to extend at its sole discretion for up to two (2) one (1) year renewal terms, for a maximum of five (5) years.

1.3 BACKGROUND INFORMATION

The City of Wilton Manors, in Broward County, was incorporated in 1947, and was created as a municipality under Chapter 165, Florida Statutes and named the Village of Wilton Manors. The Laws of Florida, 1953, Chapter 29609 established the present municipality, designated it the City of Wilton Manors and enacted its Charter. The City operates under the Mayor/Commission form of government and provides the following services as authorized by its Charter: general government, public safety, public services, transportation, and culture and recreation. Additional information about the City is available at the City's website: www.wiltonmanors.com.

1.4 DEFINITIONS

Terms used in these Instructions to Offerors are defined as follows:

a. CITY – the City of Wilton Manors, a municipal corporation of the State of Florida.

b. CONTRACT – a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or sub-award (see 2 C.F.R § 200.92 Sub-award).

c. CONTRACTOR – 1. Contractor means an entity that receives a contract as defined in 2 C.F.R. §200.22 Contract. 2. The individual(s) or firm(s) to whom the award is made and who executes the Contract Documents.

d. OFFEROR – one who submits a Proposal in response to a solicitation, as distinct from a Sub-Offeror, who submits a Proposal to the Offeror.

e. NOTICE TO PROCEED – a written notice by the City notifying Contractor to commence work in response to an emergency incident. Such notice to proceed will provide an approximate date on which work is to commence.

f. PROPOSER – one who submits a Proposal in response to a solicitation. The terms "Offeror" and "Proposer" are used interchangeably and have the same meaning.

g. PROPOSAL DOCUMENTS – the Request for Proposals, Instructions to Offerors, Offeror's Qualifications Statement, Non-Collusive, Non-Discrimination and Non-Debarment Affidavits, Domestic Partnership Certification, Certified Resolution, Contractor Drug-Free Workplace, E-verify, Offeror's Proposal, Proposal Security and Specifications, if any, and the proposed Contract Documents (including all Addenda issued prior to opening of Proposals).

h. SUCCESSFUL OFFER – the lowest, qualified, responsible and responsive Offeror to whom City (on the basis of City's evaluation as hereinafter provided) makes an award.

1.5 TERMS AND DEFINITIONS RELATED T0 SCOPE OF WORK

These acronyms shall be used hereafter throughout this solicitation:

FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FDOT	Florida Department of Transportation
FDEP	Florida Department of Environmental Protection
FDH	Florida Department of Health
NRCS	Natural Resources Conservation Services

SFWMD South Florida Water Management District

a. APPLICANT: Is the City of Wilton Manors.

b. CONSULTANT: The Consultant is a person or entity which included employees, partners, principals, agents, and assignees who are party to the agreement for the purpose of providing services, and will be referred to as a Contractor for purposes of this proposal.

c. DATA MANAGER: Manager of data collected from monitoring operations and employed by the Contractor.

d. EMERGENCY OPERATIONS CENTER (EOC): An emergency operations center or EOC, is a central command and control facility responsible for carrying out the principles of emergency preparedness and emergency management, disaster management functions at a strategic level in an emergency situation.

e. FEDERAL EMERGENCY MANAFEMENT AGENCY (FEMA): FEMA is a funding source to the City for activities during an event declared a disaster by the President of the United States. FEMA eligible debris removal is second and subsequent passes on **FHWA** eligible roads and other roadways not on the federal aid system.

f. FEDERAL HIGHWAY ADMINISTRATION (FHWA): FHWA, through the Emergency Relief program is a federal funding source for work on Federal-Aid roadways and facilities. FHWA has designated federal aid roadways also known as "on-system" roadways that are eligible for Emergency Relief funding.

g. PROJECT MANAGER: The Project Manager is a Contractor who functions as the point of contact for the City responsible for the overall project management.

h. SYSTEM: The word "System" is used in reference to the electronic portion of electronic debris monitoring.

i. SYSTEM DATABASE: A system database is a compilation of all information gathered or reconciled and meets requirements set forth by this Scope of Services.

Section 2 – Scope of Services

2.1 SCOPE OF PROPOSAL

The City of Wilton Manors is required to operate during and after emergency event situations, such as situations of an emergency nature resulting from disasters, civil disturbances or civil defense emergencies which may or may not include search and rescue operations. Include, but are not limited to, hurricanes, demonstrations and riots. While this typically happens following the passing of a hurricane, there may be other

emergencies declared by city, state or federal officials that require City functions to continue operating above and beyond normal operations. In these instances, City employees need to be fed on a daily basis. It is the City's intent to establish a contract for the provision of meals upon the request of authorized City personnel. The contractor is to supply all labor, equipment, supplies, food, management, etc.

The City may periodically host functions for special event where catering services will also be required.

2.1.1 Proposer will furnish all food, beverage, and personnel necessary for an efficient and sanitary catering and clean up service for City of Wilton Manors First Responders and support personnel in the event of a natural disaster or other related crises.

2.1.2 Proposer will purchase and prepare an adequate quantity of food to serve meals to the total number of personnel as directed by the City's Emergency Management Director or designee.

2.1.3 Proposer will provide the catering and clean-up service in accordance with the terms, conditions and requirements stated herein.

2.2 PROPOSER EXPERIENCE, EXPERTISE AND RELIABILITY

2.2.1 Proposer will submit with their bid a brief history of the organization, including accreditation status, if applicable.

2.2.2 Proposer will provide a detailed description of the two or three largest events the company has catered in the past two years. That description should include, at the minimum, the number of meals provided, type of food provided, the number of hours the event lasted, and the number of employees used for that assignment. Please include contact names and telephone numbers of the clients for these events.

2.2.3 Proposer will thoroughly describe its capability to perform/facilitate the services required, to include methodology, approach, available operational facilities and/or number of locations, etc.

2.3.3.1 Proposer will address in its response the mobilization and staging abilities for delivering meals to multiple locations (preferred), or if it would be the City's responsibility to pick up meals from its location.

2.3.3.1.1 Possible delivery locations:

a. City Hall Emergency Operations Command Center
2020 Wilton Drive, Wilton Manors, Fl. 33305

b. Hagen Park

2020 Wilton Drive, Wilton Manors, Fl. 33305

c. Island City Park Preserve (ICPP)
823 NE 28th Street, Wilton Manors, Fl. 33334

d. Richardson Historic Park & Nature Preserve
1937 Wilton Dr., Wilton Manors, FL. 33305

2.3.3.2 Proposer will address the number of employee's it would dedicate to this effort and a list of equipment the company owns to meet the requirements described herein.

2.3.3.3 Proposer will provide a detailed description of the meal options for breakfast, lunch and dinner as requested on the RFP.

2.3.3.4 Proposer will provide an explanation of its experience in providing meals in large quantities under emergency conditions and a detailed plan on how it would meet the City's requirements during a disaster event.

2.3 CONTRACTOR RESPONSIBILITIES

2.3.1 Contractor will plan weekly menus equal to or better than examples given in the RFP. Substitutions or variations shall be submitted to the Emergency Management Director or designee for approval. Food substitutes for Diabetic Meals or other dietary restrictions as needed shall be coordinated and communicated to the Contractor through the Facility Meal Coordinator in advance of the scheduled serving. Contractor should be operational and ready to serve within 48 hours of activation notice from the Emergency Management Director or designee.

2.3.2 Contractor will only utilize food products that are fresh, wholesome, of good odor and taste, and processed under sanitary conditions.

2.3.3 Contractor will have the option to prepare all meals offsite or at site(s) designated by the Emergency Coordinator or designee. The Contractor is authorized to bring in a mobile kitchen(s) to the designated location(s) to prepare and serve the meals. In either case, food shall be maintained in either Cambro type containers, Chafing Dishes or Steam Tables for meals that will be served in-house and provide disposable containers for meals that are picked up by individuals going out into the field. All methods of serving the meals must be acceptable by the food service industry. Meals served must include utensils, napkins, salt/pepper and condiments appropriate to the meal. If required, the Facility Meal Coordinator will provide Meal Runners to pick up meals from the Contractor location.

2.3.4 Contractor must provide all phases of service in compliance with Federal, State, and local guidelines governing health and food service sanitation.

2.3.5 Contractor must serve all food at the proper temperatures and with proper freshness.

2.3.6 Contractor must store all food and food products at a safe temperature and must handle leftover food/food products in a safe and acceptable way by food service practice.

2.3.7 Food services shall be available 24 hours a day with serving times as follows:

2.3.7.1 Breakfast 6:00 AM till 9:00 AM

2.3.7.2 Lunch 11:00 AM till 2:00 PM

2.3.7.3 Dinner 6:00 PM till 8:00 PM

2.3.8 Contractor will provide measured serving portions to equal one meal plus one-half of a second meal. The one and one-half serving portion shall constitute the bid price for one meal as entered on the Bid Response Page.

2.3.9 Contractor will not serve leftovers from other functions they may cater during off duty hours, or leftovers from the previous day menu.

2.3.10 Contractor is responsible for the purchasing and receiving of all food, merchandise, supplies and food equipment at the designated serving locations. Contractor will also be responsible for providing any power cabling appropriate to its on-site food preparation equipment.

2.3.11 Contractor is responsible for providing waste containers and trash bags for all refuse and waste materials created by the Contractor's operations. Waste materials created by the Contractor's operations in the food service area shall be promptly disposed of after each meal or as needed during the serving of meals. The City will provide a dumpster for the disposal of trash generated on-site or will coordinate with the Solid Waste Department for the removal of such.

2.3.12 Waste foods will be kept in closed metal or plastic containers until removed from the serving locations.

2.3.13 Contractor will provide an all-inclusive invoice for the total number of meals served at the end of each serving shift, Breakfast, Lunch and Dinner. The invoice shall be turned in to each Facility Meal Coordinator at the end of each serving shift.

2.3.14 Contractor will make available coffee service with cups, sugar, creamer, stirrers, etc. on a 24/7 basis. Bidders shall include with their bid response the cost of coffee service per location.

2.4 FOOD & BEVERAGE REQUIREMENTS

The Contractor shall provide the following minimum menu in sufficient quantities as requested by the City. Bidder shall quote a total cost per person based on this menu, the number of serving sites described above and portion sizes. Portions are based on adult, per person. **The City encourages Bidders to submit alternate menus and suggestions to provide a variety of foods.** Following is the suggested standard menu on which the proposal should be based.

A. Minimum Suggested Menu:

ITEM DESCRIPTION	SERVING SIZE PER ADULT
2.4.1. Breakfast to include	
a. Egg croissant, with ham or bacon	1 each
b. Bagels and Pastries	1 each
c. Cold Cereal	1 Serving
d. Fresh Fruit	1 Serving
e. Coffee (sugar, creamers, and cups)	8 oz. serving
f. Bottle of water 2 each,	16 oz. size
2.4.2. Lunch to Include	
a. Sandwich (12” or comparable) (Turkey, ham, roast beef, tuna salad, with lettuce, tomato and pickle)	1 each
b. Whole fruit (apple, orange, banana, etc.)	1 piece
c. Grilled Chicken, Burgers	1 each
d. Potato chips	1 single serving bag
e. Cookies, Pudding, Brownies	1 Serving
f. Bottle of water	16 oz. size
2.4.3 Dinner to include	
a. Hot entrée	8 oz. of meat or pasta
b. Side vegetable	8 oz. serving
c. Tossed salad	1 serving
d. Dinner roll and butter	1 each
e. Dessert (cake, cookies, or similar)	1 serving
f. Bottle of water	2 each, 16 oz. size

B. Accompaniments:

To be included in total cost per person.

1. Condiments: salt, pepper, regular sugar, sugar substitute, mustard, ketchup and mayonnaise will be provided in individual sealed packets. No

jars or other large serving containers will be accepted. The Items listed should not require spoilage protection.

2. Disposable Dinnerware: Meals should be provided in boxes or other covered, heavy duty dinner plates as appropriate for the particular meal. Napkins and utensils (heavy duty knives, forks, and spoons) will be provided by the Contractor as well.

C. Bulk beverages:

The City may request the following items to be delivered in bulk in some type of plastic or metal container that holds a minimum of 30 servings. The container must hold the appropriate temperature for a reasonable length of time. These items would be in addition to any beverages provided with the meals shown above. Each container shall bear the name of the Contractor to aid in their return. The bidder will specify a cost per large container. Please do not bid a price per individual serving.

1. Hot coffee: with the appropriate number of cups for the container size plus 10%, dry creamer in shakers or packets, sweeteners (sugar and substitute) and stirrers. Serving size 8 ounces.
2. Iced tea, unsweetened, with the appropriate number of cups for the container size plus 10%. Serving size is 12 ounces.
3. Lemonade, the appropriate number of cups for the container size plus 10%. Serving size is 12 ounces.

2.5 PERSONNEL REQUIREMENTS

2.5.1 All employees of the Contractor will be neatly attired in uniforms that clearly and properly identify the company represented. The employees shall be neat and clean in appearance and courteous towards the patrons, the public and their fellow employees.

2.5.2 The Contractor will train and closely supervise all its employees ensuring they practice the high standards of cleanliness, courtesy and service required.

2.5.3 The Contractor will adhere to the adequate number of personnel, compatibility of food and beverage products, and other rules and regulations appurtenant to the event.

2.6 POWERS OF THE EMERGENCY MANAGEMENT DIRECTOR/FACILITY MEAL COORDINATOR

2.6.1 The City of Wilton Manors Emergency Management Director or designee and the Facility Meal Coordinator will have the right to dismiss any Contractor or employee(s) of the Contractor from the premises whenever it appears in the best interest of the City of Wilton Manors emergency operations.

2.6.2 The Emergency Management Director or designee reserves the right to issue rules and regulations governing the general provision of services as to maintain consistency of kind and quality of food and beverage services.

2.6.3 The City of Wilton Manors Emergency Director or designee will assist the Awardee in obtaining water and the disposal of "gray water" to avoid interruption in services. The Contractor will be primarily responsible for its own fuel supply. However, if required for food preservation and continuation of service; or due to disaster conditions or circumstances.

2.7 MEAL ORDER CANCELLATION

2.7.1 The City reserves the right to cancel any and all meals, without penalty, by notification to the Contractor 24 hours in advance of the next scheduled serving. The Contractor must provide re-stocking costs, specific cancellation criteria and/or cost to be incurred in the event food service is cancelled with less than 24 hour notice.

2.7.2 The City reserves the right to immediately cancel the vendor's contract without penalty if the food or services provided does not meet the requirements specified by the contract.

2.8 BACKGROUND CHECKS

2.8.1 Prior to assignment, the Contractor will need to provide a list of all employees who will be assigned for this service. The City reserves the right to conduct background checks on these employees and further reserves the right to reject the assignment of any employee(s) based on the results of the background check.

Section 3 – Procurement Instructions

3.1 QUESTIONS

Any questions relative to interpretation of specifications or the proposal process must be e-mailed to Daren Jairam at djairam@wiltonmanors.com by June 14, 2021, 7:00 a.m. Answers to all questions will be included in an Addendum to the RFP and will be posted on the City's website on June 17, 2021. It will be the responsibility of the Proposer to review the answers to these questions prior to submitting a proposal. It is the Proposer's responsibility to ascertain if any addenda have been issued, to obtain all such addenda, and to return executed addenda with the proposal. Proposers should continue to monitor the City's website.

Written questions received after June 14, 2021, 7:00 a.m. may not be answered. Only written questions answered by a formal written Addendum will be binding.

3.2 SUBMISSION OF PROPOSAL

3.2.1 Proposer shall submit five (5) paper copies of the proposal in the prescribed form under Section 3.3 along with a single flash/jump drive containing the RFP response in Adobe PDF format. All copies and the flash/jump drive must be plainly marked by the Proposer with the Proposer name, date and this RFP Title and number.

3.2.2 Sealed proposals must be received on or before **July 01, 2021 at 2:30 PM (Eastern Time),** at the Office of the City Clerk, 2020 Wilton Drive, Wilton Manors, Florida 33305. The City Clerk's office hours are 7:00 a.m. to 6:00 p.m., Monday through Thursday, except City holidays. Any proposal received after the specified time will be returned unopened. The Proposer is solely responsible for ensuring the proposal is received on or before the deadline.

INSTRUCTIONS FOR DELIVRY OF RFP.

1. Bids must be in seal package as indicated in the RFP.
2. Bidders must practice social distance etiquette when delivering bid package.
3. RFP cut off time and date will be enforced.

3.2.3 On the envelope containing the proposal the following shall be written in large letters:

Proposal For:	Emergency and Special Events Catering Services
RFP Number:	RFP # 2021-12
To Be Opened:	July 01, 2021 at 2:30 p.m.

3.2.4 Proposals will be opened and listed publicly in Commission Chambers, 2020 Wilton Drive, Wilton Manors, Florida 33305 on the date and time specified above. Bidders must practice social distance etiquette when attending bid opening.

3.2.5 All proposals that are not submitted in the required format or missing required forms will be subject to rejection. The complete RFP and applicable forms are available on the City's website (www.wiltonmanors.com) or by sending an email to djairam@wiltonmanors.com. All proposals must be signed in ink. It is agreed upon by the Proposer that the signing and delivery of the Proposal represents the Proposer's acceptance of the terms and conditions of the specifications.

3.2.6 All proposals must be submitted in a sealed envelope, addressed, and mailed or delivered as stated in this Request for Proposal. Any Proposer may withdraw their proposal either personally, or by electronic or written communication at any time prior to opening of the proposals. All proposals must be in the possession of the City Clerk's office at the time of the proposal opening. Proposals submitted after the time specified shall not be considered and shall be returned unopened. It is the sole responsibility of the Proposer to ensure that their proposal reaches the City Clerk's Office on or before the closing date and

time. Proposals submitted by telephone, telegram or facsimile or email will not be accepted. If the proposal is sent by overnight courier, (i.e., Federal Express, UPS, etc.), the proposal must be enclosed in an envelope marked as instructed above.

3.2.7 Incurred Expenses - The City is not responsible for any expenses the Proposer may incur in preparing and submitting proposals for this Request for Proposal.

3.2.8 Interviews / Presentations - The City reserves the right to conduct personal interviews or require proposers to make an oral presentation as part of the proposal evaluation process.

3.2.9 Request for Modification - The City reserves the right to request that the Proposer modify their proposal to fully meet the needs of the City.

3.2.10 Request for Additional Information - The Proposer shall furnish such additional information as the City of Wilton Manors may reasonably require. This includes information that indicates financial resources. The City reserves the right to make investigations of the qualifications of the Proposer as it deems appropriate, including but not limited to a background investigation. The City also reserves the right to make such investigations, as it may deem necessary to establish the competency and financial ability of any Proposer to perform the work.

3.2.11 Acceptance, Rejection, or Modification to Proposals - The City of Wilton Manors reserves the right to reject any or all proposals, in whole or in part, with or without cause, to waive any informalities and technicalities, and to award the contract on such coverage and terms it deems will best serve the interest of the City. Criteria utilized by the City for determining the most responsive and responsible Proposer is described in Section 4 of this document.

3.2.12 Proposals Binding - All proposals submitted shall be binding for one hundred fifty (150) calendar days following opening.

3.2.13 Addendum and Amendment to Request for Proposal - If it becomes necessary to revise or amend any part of this Request for Proposal, the City will post the Addendum on the City's website, and will distribute it via email to all identified prospective Proposers.

3.2.14 Economy of Preparation - Proposals should be prepared simply and economically, providing a straightforward and concise description of the Proposer's ability to fulfill the requirements of this Request for Proposal.

3.2.15 Proprietary Information - In accordance with Chapter 119 of the Florida Statutes (Public Records Law) and, except as may be provided by other applicable State

and Federal Law, all Proposers should be aware that Request for Proposals and the responses thereto are in the public domain. However, the Proposers are requested to identify specifically any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law.

3.2.16 Proposals Will Not Be Returned - All proposals received from Proposers in response to this Request for Proposal will become the property of the City of Wilton Manors and will not be returned to the Proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the City.

3.2.17 Proposer's Certification - By submitting a proposal, the Proposer certifies that they have fully read and understands the proposal method, meets the requirements and has full knowledge of the scope, nature, and quality of work to be performed.

3.2.18 In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that proposals be organized in the manner specified in Section 3.3. An electronic version of this RFP may be obtained from Daren Jairam, Purchasing Coordinator, at djairam@wiltonmanors.com or on www.wiltonmanors.com.

3.2.19 Any deviation from the specifications must be explained in detail; otherwise, it will be considered that the proposal is in strict compliance with the specifications and the successful Proposer will be held responsible for meeting the specifications. Any exceptions or clarifications to any section of the specifications shall be clearly indicated on a separate sheet(s) attached to the proposal form and shall specifically refer to the applicable specification paragraph number and page.

3.2.20 Proposer's Responsibility to Be Informed - Proposers are expected to fully inform themselves as to the requirements of the specifications and failure to do so will be at their risk. A Proposer shall not expect to secure relief on the plea of error.

3.2.21 Cone of Silence - To ensure fair consideration for all Proposers, the City's Code of Ordinances prohibits communication to or with any City Commissioner, City official, any department, division or employee during the submission process, except as provided below. Additionally, the City prohibits communications initiated by a Proposer to the City Official or employee evaluating or considering the proposals prior to the time an award decision has been made. Any communication between Proposer and the City in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposal will be conducted through the City's Purchasing Coordinator, Daren Jairam at

djairam@wiltonmanors.com. Communications initiated by a Proposer to anyone other than the City's Purchasing Coordinator may be grounds for disqualifying the offending Proposer from consideration for award of the proposal and/or any future proposal.

3.3 FORMAT AND CONTENTS

3.3.1 Cover Page - Show the name of Proposer's agency/firm, address, telephone number, name of contact person, email address, date, and the proposal number and description.

3.3.2 Tab 1 - Table of Contents

Include a clear identification of the material by section and by page number.

3.3.3 Tab 2 - Letter of Transmittal

3.3.3.1 Limit to one or two pages.

3.3.3.2 Briefly state the Proposers understanding of the work to be done and make a positive commitment to perform the work.

3.3.3.3 Give the names of the persons who will be authorized to make representations for the Proposer, their titles, addresses, email and telephone numbers.

3.3.3.4 Provide an official signature of a Corporate Officer certifying the contents of the Proposer's responses to the City's Request for Proposal.

3.3.4 Tab 3 - General Information

3.3.4.1 Name of Business.

3.3.4.2 Mailing Address and Phone Number.

3.3.4.3 Names and contact information of persons to be contacted for information or services if different from name of person in charge.

3.3.4.4 Normal business hours.

3.3.4.5 State if business is local, national, or international and indicate the business legal status (corporation, partnership, etc.).

3.3.4.6 Give the date business was organized and/or incorporated, and where.

3.3.4.7 Give the location of the office from which the work is to be done and the number of professional staff employees at that office.

3.3.4.8 Indicate whether the business is a parent or subsidiary in a group of firms/agencies. If it is, please state the name of the parent company.

3.3.4.9 State if the business is licensed, permitted and/or certified to do business in the State of Florida and attach copies of all such licenses issued to the business entity.

3.3.4.10 Proposers, both corporate and individual, must be fully licensed and certified in the State of Florida at the time of submittal of RFP for the type of goods/services to be provided. Should the Proposer not be fully licensed and certified, their RFP submittal shall be rejected. If applicable, any permits, licenses, or fees required shall be the responsibility of the Proposer. No separate or additional payment will be made for these costs. Adherence to all applicable code regulations, Federal, State, City, City, etc., are the responsibility of the Proposer.

3.3.4.11 How did you hear about the RFP ? Indicate if it was via the City's website, internet search, DemandStar, newspapers, email, etc. The City of Wilton Manors is always looking for ways to improve its services.

3.3.5 Tab 4 – Project Approach

3.3.5.1 Describe in detail your proposal to fulfill the requirements of the scope of services.

3.3.5.2 Ensure that the proposal fully addresses all requirements of the Scope of Services and all other requirements set forth in this RFP .

3.3.6 Tab 5 – Experience and Qualifications

3.3.6.1 Specify the number of years the Proposer has been in business. A minimum of five (5) years in business is required.

3.3.6.2 Identify the Proposer's qualifications to perform the services identified in this RFP .

3.3.6.3 **Provide a minimum of five (5) references with all contact information including telephone number and email address.** If you have any current or past governmental agencies as customers, you are encouraged to list them, especially those from Broward County or other Florida counties. It is recommended that references be no less than similar in size to the City or have a minimum of equipment similar to the City.

3.3.7 Tab 6 – Pricing and Payment Terms

3.3.7.1 Provide a detailed itemization of cost of services.

3.3.7.2 Indicate whether or not the Proposer is willing to accept payment via the City's P-Card.

Section 4 – Review and Evaluation Process

4.1 REVIEW AND EVALUATION

The City will conduct a comprehensive and impartial review and evaluation of all Proposals meeting the requirements of this solicitation. Please note that the City, at its sole discretion, reserves the right at any time during the process to reject any and all Proposals that are not in the best interest of the City.

Only timely submitted Proposals shall be reviewed and evaluated by staff to determine if they comply with the required forms, documents and submission requirements listed in the RFP . This will be a pass/fail review. Failure to meet any of these requirements may render a Proposal to be a failing response and result in rejection of the entire Proposal. Further evaluation will not be performed.

4.1.1 The City reserves the right to require live or web-based presentations/demonstrations from any or all proposers.

4.1.2 The Evaluation Committee will rank all proposals according to the criteria listed herein.

4.1.3 Contract negotiations will then be conducted with the highest ranked Proposer and the negotiated contract will be submitted to the City Commission for final approval.

4.1.4 The City reserves the right to reject any and all proposals and to waive minor defects or irregularities. The City further reserves the right to seek new proposals when such a procedure is reasonably in the best interest of the City to do so.

4.1.5 If negotiations with the highest ranked Proposer fail, the City will then begin negotiations with the second-ranked firm, and so on.

4.1.6 For the purpose of review, evaluation, scoring and ranking, review categories have been divided into multiple sections. The following reflects the Pass/Fail criteria and the maximum number of points that may be awarded by category:

	EVALUATION CRITERIA	POINTS
1	Submission of all required Forms and Documents as indicated in Section 3.3.	Pass/Fail
2	Attachment A – Non-Discrimination Affidavit	Pass/Fail
3	Attachment B – Domestic Partnership Certification	Pass/Fail
4	Attachment C – Non-Debarment Affidavit	Pass/Fail
5	Attachment D – Drug-Free Workplace Certification	Pass/Fail
6	Attachment E—Non-Collusive Affidavit	Pass/Fail
7	Attachment F – Certification Pursuant to Florida	Pass/Fail
8	Attachment G – E-verify Form for all Solicitations	Pass/Fail
9	Experience and Qualifications	40
10	Project Approach	30
11	Pricing	30

4.1.7 Tie Bids – If the determination of the lowest responsive, responsible bidder results in a tie, the provisions of Section 2-268 (e)(8) of the City's Code of Ordinances must be followed.

Section 5 – General Terms and Conditions

5.1 GENERAL AND LEGAL REQUIREMENTS

Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the items covered herein shall be deemed to apply. Lack of knowledge by the Proposer will in no way be a cause for relief from responsibility. Any conflicts between this RFP and applicable and preemptive Broward County Towing and Immobilization Regulations or applicable and preemptive State laws shall be resolved in favor of the preemptive law. The City shall have sole discretion of determining whether there are any conflicts with this RFP and any Broward County Towing and Immobilization Regulations or State laws.

5.1.1 Non-Discrimination - Section 2-269 of the City's Code of Ordinances states in part:

> *All contracting agencies of the city, or any department thereof, acting for or on behalf of the City, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor not to unlawfully discriminate (as proscribed by federal, state, county, or other local law) on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age above the age of twenty-one (21), sexual orientation, gender identity or expression, marital status,*

pregnancy, familial status, veterans status, political affiliation, or physical or mental disability and such person's association with members of classes protected under this chapter or in retaliation for or opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder

The Proposer agrees to abide by all provisions of the City Code of Ordinances, including Section 2-269.

5.1.2 **Non-Discrimination Affidavit** - Proposers shall submit an executed copy of the Non-Discrimination Affidavit attached to this Request for Proposal – Attachment A.

5.1.3 **Domestic Partnership Affidavit** – Proposers shall submit an executed copy of Domestic Partnership Affidavit attached to the Request for Proposal – Attachment B.

5.1.4 **Non-Debarment Affidavit** - The Proposer shall submit an executed copy of the Debarment Affidavit attached to this Request for Proposal – Attachment C.

5.1.5 **Drug-Free Workplace** – The Proposer shall submit an executed copy of the Drug Free Workplace Certification – Attachment D.

5.1.6 **Non-Collusive Affidavit**—The Proposer shall submit an executed copy of the Non-Collusive Affidavit—Attachment E.

5.1.7 **Certification Pursuant to Florida Statute § 287.135** – The Proposer shall submit an executed copy of the Certification Pursuant to Florida Statute § 287.135 – Attachment F.

5.1.8 This Request for Proposal and the Proposer's proposal shall be included and incorporated into the final award.

5.1.9 **Small and Minority Businesses, Women's, and Labor Surplus Firms Participation –** the City encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms.

5.1.10 **E-verify Form for All Solicitations** —The Proposer shall submit an executed copy of the E-verify Form for All Solicitations—Attachment G.

5.2 APPLICABLE LAW AND VENUE

Thi RFP , responses from Proposers and contracts resulting from this RFP shall be governed by the laws of the State of Florida. Any legal actions between the City of Wilton Manors and any RFP Proposer shall be brought in Broward County, Florida.

5.3 CONDITIONS OF PROPOSALS

5.3.1 Late Proposals: Proposals received by the City after the time specified for receipt will not be considered. Proposers shall assume full responsibility for timely delivery of the proposal to the location designated for receipt of proposals.

5.3.2 Completeness: All information required by the Request for Proposal must be supplied to constitute a legitimate proposal.

5.3.3 Public Opening - All proposals will be publicly opened at the time and place specified and made available for public inspection.

5.3.4 Award Presentation – The City Manager will present to City Commission for acceptance and final award the top ranked proposal or will reject all proposals, within one hundred and fifty (150) calendar days from the date of opening of proposals.

5.4 TERMS AND CONDITIONS OF AGREEMENT

All sections of the City's specifications and all supplementary documents are essential parts of the City's contract and requirements occurring in one area are deemed as though occurring in all. The RFP and the response to the RFP shall be deemed an integral part of the final negotiated contract.

5.5 DISCUSSION WITH RESPONSIBLE PROPOSERS

Discussions may be conducted with responsible Proposers who submit proposals determined to be reasonably acceptable of being selected for award for the purpose of clarification and to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers except as may be required by the Florida Public Records Law, Chapter 119, Section 286.0113, & Section 286.011, Florida Statutes.

5.6 EXECUTION OF AGREEMENT

The successful highest ranked Proposer shall, within thirty (30) calendar days after the City of Wilton Manors issues Notice of Award, negotiate and enter into a contract with the City for the proposed services. Failure to comply with the established deadline for submittal of required documents may be grounds for cancellation of the award.

5.7 CONFLICT OF INTEREST

The award hereunder is subject to the provision of State of Florida Statutes and City of Wilton Manors Ordinances.

The Proposer, by affixing their signature to the proposal's "Letter of Transmittal", declares that the proposal is made without any previous understanding, agreement, or connections with any City official or persons, firms, or corporations making a proposal on the same items and without any outside control, collusion or fraud. By signing the proposal, the Proposer further declares that no City Commission Member, other City officer, or City employee directly or indirectly owns more than five (5) percent of the total assets or capital stock of the Proposer entity, nor will directly or indirectly benefit by more than five (5) percent from the profits or emoluments of this contract.

5.8 FISCAL YEAR FUNDING APPROPRIATIONS/SPECIFICIED PERIOD

Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contract. Payment and performance obligations for succeeding fiscal periods shall be subject to appropriation by City Commission for funds.

5.9 PUBLIC ENTITY CRIMES

A person or affiliate, as defined in §287.133 of the Florida Statutes, who has been placed on the convicted Proposer 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 proposer, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in §287.01 of the Florida Statutes for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted Proposer list.

5.10 FLORIDA PROMPT PAYMENT ACT

For purposes of billing submission and payment procedures, a "proper invoice" by a proposer, Contractor or other invoicing party shall consist of at least all of the following:

- A description (including quantity) of the goods and/or services provided to the City (or a party on behalf of the City) reasonably sufficient to identify it (or them);
- The amount due, applicable discount(s), and the terms thereof;
- The full name of the Contractor or other party who is supplying the goods and/or services including a mailing address in case of a dispute and a mailing address for payment purposes (if they are different) and a telephone number.

5.11 INSURANCE REQUIREMENTS

Proposers must submit with their proposal, Proof of Insurance, meeting or exceeding the following requirements.

5.11.1 The highest ranked Proposer shall secure and maintain, at its own expenses, and keep in effect during the full period of the contract a policy or policies of insurance, which must include the following coverage and minimum limits of liability:

(a) **Worker's Compensation and Employer's Liability Insurance** for all employees of the highest ranked Proposer engaged in work under the Contract in accordance with the laws of the State of Florida. The highest ranked Proposer shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

(b) **Comprehensive General Liability Insurance** with the following minimum limits of liability:

$ 1,000,000.00	Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage to include:

(1) Premises and Operations;
(2) Independent Contractors;
(3) Products and Completed Operations:
(4) Broad Form Property Damage;
(5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
(6) Personal Injury Coverage with employment and contractual exclusions removed and deleted.

(c) **Comprehensive Automobile Liability Insurance** for all owned, non-owned and hired automobiles and other vehicles used by the Contractor in the performance of the work with the following minimum limits of liability:

$ 1,000,000.00	Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

(d) **Garage Keeper's Liability** in the minimum limit of fifty thousand ($50,000) dollars to protect the owners of any and all vehicles or trailers, towed or stored by the Proposer, pursuant to this Agreement, from

loss, or damage to such vehicle or trailer on account of such removal or storage.

(e) Professional/Errors & Omissions - $250,000.00
(f) Employee dishonesty/theft - $250,000.00

5.11.2 ALL LIABILITY INSURANCE POLICIES SHALL SPECIFICALLY PROVIDE THAT THE CITY OF WILTON MANORS SHALL BE NAME AND LISTED AS AN ADDITIONAL INSURED. Insurance Companies selected must be acceptable to City. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice or such other notice as is required by the policy has been given to City by certified mail. Additionally, in the event the Contractor receives notice of cancellation from its insurance company, the Contractor shall deliver a copy of such notice to the City within five (5) business days of the receipt of such notice of cancellation.

5.11.3 The Contractor shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against City for payment or assessments in any form on any policy of insurance.

5.11.4 The Contractor shall not commence work under the Contract until obtaining all of the minimum insurance herein described.

5.11.5 The Contractor agrees to perform the work under the Contract as an independent contractor, and not as a subcontractor, agent or employee of the City.

5.11.6 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.

5.11.7 The highest ranked Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Wilton Manors as additional insured.

5.12 CODE OF ETHICS

If any Proposer violates the Code of Ethics of the State of Florida or the Code of Ethics of Broward County, Florida with respect to this proposal, such Proposer may be disqualified from performing the work and future work for the City.

5.13 PATENTS, ROYALITIES AND COPYRIGHT

The Proposer, without exception, shall defend, indemnify and save harmless the City of Wilton Manors, Florida and its employees from any action, proceeding liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City of Wilton Manors, Florida.

If the bidder uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the Bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

5.14 INDEMNIFICATION

5.14.1 GENERAL INDEMNIFICATION: To the fullest extent permitted by laws and regulations, the highest ranked Proposer shall indemnify, defend, save and hold harmless the CITY, its officers, agents, elected and appointed officials, and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or in consequential arising out of or alleged to have arisen out of or in consequence of the products, goods or services furnished by or operations of the highest ranked Proposer or his subcontractors, agents, officers, employees or independent contractor pursuant to or in the performance of the Contract.

5.14.2 The highest ranked Proposer shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

5.14.3 City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of successful Proposer under the indemnification agreement. Nothing contained here the highest ranked in is intended nor shall it be construed to waive CITY's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time.

5.15 WARRANTIES

5.15.1 Contractor warrants to City that the consummation of the work provided for in the Contract documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which successful Proposer is a party.

5.15.2 Contractor warrants to City that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

5.15.3 Contractor warrants to City that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

5.15.4 All warranties made by Contractor together with service warranties and guaranties shall run to City and the successors and assigns of City.

5.16 PUBLIC RECORDS

The City of Wilton Manors is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

5.16.1 Keep and maintain public records required by the CITY to perform the service;

5.16.2 Upon request from the CITY's custodian of public records, provide the CITY 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 in chapter 119, Fla. Stat., or as otherwise provided by law;

5.16.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, Contractor shall destroy all copies of such confidential and exempt records remaining in its possession after once the Contractor transfers the records in its possession to the CITY; and

5.16.4 Upon completion of the contract, Contractor shall transfer to the CITY, at no cost to the CITY, all public records in Contractor's possession. All records stored electronically by Contractor must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

5.16.5 The failure of Contractor to comply with the provisions set forth in the Agreement shall constitute a Default and Breach of the Agreement, for which, the City may terminate the Agreement.

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

CITY CLERK
2020 WILTON DRIVE
WILTON MANORS, FLORIDA 33305
(954) 390-2123
cityclerk@wiltonmanors.com

ATTACHMENT A

NON-DISCRIMINATION AFFIDAVIT

I, the undersigned, hereby duly sworn, depose and say that the organization or business entity represented herein shall not discriminate against any person in its operations, activities or delivery of services under any agreement it enters into with the City of Wilton Manors. The same shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

It is the policy of the City of Wilton Manors that Minority/Women - Owned Business Enterprises (MWBE) shall have the maximum opportunity to participate in all contracts. The City of Wilton Manors will accept MWBE certifications from Broward County and any State of Florida certification.

Further, City Code Section 2-269 requires that all contracting agencies of the City, or any department thereof, acting for or on behalf of the City, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor not to unlawfully discriminate (as proscribed by federal, state, county, or other local law) on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age above the age of 21, sexual orientation, gender identity or expression, marital status, pregnancy, familial status, veterans status, political affiliation, or physical or mental disability and such person's association with members of classes protected under this chapter or in retaliation for or opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended there under.

By: _____

Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____(month), _____(year), by _____(name of person) as _____(type of authority e.g. officer, trustee, attorney in fact) for _____(name of party on behalf of whom instrument was executed).

_____(Signature of Notary Public - State of Florida)

_____(Print, Type, or Stamp Commissioned Name of Notary Public)

____ Personally Known
____ Produced Identification
Type of Identification Produced _____

ATTACHMENT B

DOMESTIC PARTNERSHIP CERTIFICATION FORM

I, the undersigned, hereby duly sworn, depose and say that the organization or business entity represented herein shall abide by the provisions of the City of Wilton Manors Code Section 2-268(v) in any activities or delivery of services under any agreement it enters into with the City of Wilton Manors.

The City of Wilton Manors Code Section 2-268(v) (see attached), establishes a Domestic Partner Benefits Requirement as described below:

> "Domestic Partner Benefits Requirement means a requirement for City Contractors to provide equal benefits for Domestic Partners. Contractors with five (5) or more employees contracting with the City, in an amount of $20,000 or more ("Covered Contracts"), shall provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to the spouses of employees and/or the dependents of the spouses of employees. A Domestic Partnership Certification Form will be included in all competitive solicitations and by virtue of the execution of the Domestic Partnership Certification Form, the contractor will certify whether it complies with the Domestic Partner Benefits Requirement."

By: _____

Title: _____

Company: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____(month), _____(year), by _____(name of person) as _____(type of authority e.g. officer, trustee, attorney in fact) for _____(name of party on behalf of whom instrument was executed).

_____(Signature of Notary Public - State of Florida)

_____(Print, Type, or Stamp Commissioned Name of Notary Public)

____ Personally Known
____ Produced Identification
Type of Identification Produced _____

CITY OF WILTON MANORS, FLORIDA

ORDINANCE NO. 2013 – 0013

(Excerpt – Section 3, "Domestic Partner Benefits Requirement")

Effective October 1, 2013

. . .

Section 3: Section 2-268 of the Code of Ordinances is amended by creating Subsection (v) as follows:

Section 2-268(v).

1. For purposes of this Section, the following definitions shall apply:

Domestic Partner shall mean any two (2) adults of the same or opposite sex, who have registered as domestic partners with Broward County, or any other jurisdiction with a domestic partner registry pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one (1) of the domestic partners. A Contractor (as hereinafter defined) may institute an internal registry to allow for the provision of equal benefits to employees with a domestic partner who does not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A Contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by Broward County, Florida.

Cash equivalent shall mean the amount of money paid to an employee with a Domestic Partner in lieu of providing benefits to the employee's Domestic Partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

Competent to contract shall mean the two partners are mentally competent to contract.

Dependent shall mean a person who lives within the household of a domestic partnership and is:

(1) A biological child or adopted child of a domestic partner; or

(2) A dependent as defined under IRS regulations; or

(3) A ward of a domestic partner as determined in a guardianship proceeding.

Domestic Partner Benefits Requirement means a requirement for City Contractors to provide equal benefits for Domestic Partners. Contractors with five (5) or more employees contracting with the City, in an amount of $20,000 or more ("Covered Contracts"), shall provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to the spouses of employees and/or the dependents of the spouses of employees. The Domestic Partner Benefits Requirement will be included in solicitations. A Domestic Partnership Certification Form will be included in all competitive solicitations and by virtue of the execution of the Domestic Partnership Certification Form, the contractor will certify whether it complies with the Domestic Partner Benefits Requirement.

Equal Benefits means the equality of benefits between employees with spouses and/or dependents of spouses and employees with Domestic Partners and/or dependents of Domestic Partners, and/or between spouses of employees and/or dependents of spouses and Domestic Partners of employees and/or dependents of Domestic Partners.

2. Equal Benefits Requirements.

A. All solicitations for Covered Contracts which are advertised shall include the requirement to provide equal benefits in the procurement specifications.

B. As part of the solicitation response, the Contractor shall certify that the Contractor:

1. Currently complies with the conditions of this Section; or

2. Will comply with the conditions of this Section at time of contract award; or

3. Will not comply with the conditions of this Section at time of contract award; or

4. Does not need to comply with the conditions of this Section because of allowable exemption.

The certification shall be in writing and signed by an authorized officer of the Contractor.

3. Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to comply with the applicable provisions of this Section by providing the Domestic Partnership Certification Form.

4. Exception and Waiver. The provisions of this Section shall not apply where:

A. The Contractor does not provide benefits to the spouse of an employee or the dependents of employee's spouse.

B. The Contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with, a religious organization, association or society.

C. The Contractor is a governmental entity.

D. The Contract is for the sale or lease of property.

E. The Covered Contract is necessary to respond to an emergency.

F. The provisions of this Section would violate grant requirements.

G. The Contractor provides an employee the cash equivalent of benefits because the Contractor is unable to provide benefits to employees' Domestic Partners despite making reasonable efforts to provide them.

H. Upon a majority vote, the City Commission may waive compliance of this Section under the following circumstances:

1. Where only one (1) solicitation response is received;

2. Where more than one (1) solicitation response is received, but the solicitation demonstrates that none of the proposed solicitations can comply with the requirements of this Section; or

3. Where the cost of the Bid, as submitted by the lowest responsive bidder which complies with the requirements of this Section, would be at least five percent (5%) greater than the lowest responsive bid submitted by the bidder which does not comply with the requirements of this Section but would otherwise have been responsive if compliance with this Section would not have been listed as a requirement in the Bid specifications.

I. In fiscal Year 2014, for a Covered Contract with a Contractor who provides reasonable assurances that the Contractor will provide benefits to employees' Domestic Partners in Fiscal Year 2014.

Grandfather. It is the intention of the City Commission that Contractors with existing contracts with the City be exempt from the application of this Ordinance until such contracts are renewed or amended.

ATTACHMENT C

NON-DEBARMENT AFFIDAVIT

_____ Being first duly sworn, deposes and says that:

He/She is _____ of _____the Proposer ("Respondent") that has submitted the attached Proposal. By offering a submission to this RFP, the Respondent certifies and affirms that to the best of his/her knowledge and belief, that:

1.The Respondent is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction of any Federal, state or local agency; and

2. The Respondent has 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 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; and

3. The Respondent is 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 2 of this affidavit; and

4. The Respondent has not within a three-year period preceding this proposal had one or more public transactions(Federal, State or local) terminated for cause or default; and

5. The Respondent will submit a revised Debarment Affidavit immediately if the status changes.

If the Respondent cannot certify that he/she is not debarred, he/she shall provide an explanation with this submittal. An explanation will not necessarily result in denial of participation in a contract. Failure to submit a debarment affidavit will disqualify the contractor from the award of any contract.

_____Check here if an explanation is attached to this affidavit.

By:_____

Print Name:_____

Title:_____

Date:_____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____(month), _____(year), by _____(name of person) as _____(type of authority e.g. officer, trustee, attorney in fact) for _____(name of party on behalf of whom instrument was executed).

_____(Signature of Notary Public - State of Florida)

_____(Print, Type, or Stamp Commissioned Name of Notary Public)

____ Personally Known
____ Produced Identification
Type of Identification Produced _____

ATTACHMENT D

DRUG-FREE WORKPLACE CERTIFICATION

Preference must be given to vendors submitting a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. This requirement affects all public entities of the State and becomes effective January 1, 1991. The special condition is as follows:

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

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

2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.

6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

_____

COMPANY NAME

_____

VENDOR'S SIGNATURE

Must be executed and returned with attached proposal to be considered.

ATTACHMENT E

NON-COLLUSIVE AFFIDAVIT

State of _____)

County of_____)

_____ being first duly sworn deposes and says that:

(1) He/she is the _____,(Owner, Partner, Officer, Representative or Agent) of _____ the Proposer that has submitted the attached Proposal;

(2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Proposer, firm, or person to fix the price or prices in the attached proposal or of any other Proposer, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Proposer, or to secure trough any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

By: _____ Title: _____

Company: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____(month), _____(year), by _____(name of person) as _____(type of authority e.g. officer, trustee, attorney in fact) for _____(name of party on behalf of whom instrument was executed).

_____(Signature of Notary Public - State of Florida)

_____(Print, Type, or Stamp Commissioned Name of Notary Public)

____ Personally Known
____ Produced Identification
Type of Identification Produced _____

ATTACHMENT F

CERTIFICATION PURSUANT TO FLORIDA STATUTE § 287.135

I,_____, on behalf of_____,
Print Name and Title **Company Name**

certify that _____ does not:
Company Name

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies that Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Contractor of the City's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes, prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and

2) Contracting with companies, for goods or services over $1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Contractor, I hereby certify that the company identified above in the section entitled "Contractor Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, and is not engaged in business operations in Syria. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

_____
COMPANY NAME

_____ _____
PRINT NAME SIGNATURE

_____
TITLE

ATTACHMENT G

E-VERIFY FORM FOR ALL SOLICITATIONS:

CITY OF WILTON MANORS
E-VERIFY FORM UNDER SECTION 448.095, FLORIDA STATUTES

TO BE RETURNED WITH PROPOSAL

Project Name: _____

Project No.: _____

1. Definitions:

"Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

"Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

"E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

2. Effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

a) All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

b) All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Wilton Manors. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Wilton Manors; and

c) Should vendor become the successful Contractor awarded for the above-named project, by entering into the contract, the Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract

with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract.

3. Contract Termination

a) If the City has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09 (1) Fla. Stat., the contract shall be terminated.

b) If the City has a good faith belief that a subcontractor knowingly violated s. 448.095 (2), but the Contractor otherwise complied with s. 448.095 (2) Fla. Stat., shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.

c) A contract terminated under subparagraph a) or b) is not a breach of contract and may not be considered as such.

d) Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.

e) If the contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.

Contractor Name

_____

_____Printed Name
Contractor Authorized Representative

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____(month), _____(year), by _____(name of person) as _____(type of authority e.g. officer, trustee, attorney in fact) for _____(name of party on behalf of whom instrument was executed).

_____(Signature of Notary Public - State of Florida)

_____(Print, Type, or Stamp Commissioned Name of Notary Public)

____ Personally Known
____ Produced Identification
Type of Identification Produced _____

Must be executed and returned with attached proposal to be considered.

END OF SECTION

EXHIBIT A

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of January 6, 2017

Title 2 → Subtitle A → Chapter II → Part 200

Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Procurement Standards

§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.

§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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§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.

§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.

Remainder of Page Intentionally Blank

EXHIBIT A - Continued

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.

(B) 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.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR 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 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Intentionally deleted.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, 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 (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, 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 work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient 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 recipient or sub-recipient must comply with the requirements of 37 CFR 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 the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award 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 the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

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

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

EXHIBIT B

The following federally required contract provisions are hereby incorporated into the Contract between the City and Contractor.

FEDERAL REQUIRED CONTRACT PROVISIONS.
FEMA – Non-Construction

If any work performed under the Original Agreement is funded in whole or in part by Federal Emergency Management Agency ("FEMA"), Contractor shall comply with all federal laws and regulations applicable to the receipt of FEMA funding, including but not limited to the contractual procedures set forth in Title 44 of the Code of Federal Regulations, Part 13 ("44 CFR 13").

A. Funds for this project are derived from federal grants and therefore the successful contractor must comply with federal guidelines. The federal funds appropriated by the Federal Emergency Management Agency (FEMA) will be administered through the State of Florida.

B. In the event of a conflict between the Federal and State of Florida Statutory Requirements listed in this section and other provisions of the Invitation to Bid, the Federal and State Statutory Requirements will govern and prevail.

C. **Contract Award**. The contract will be awarded on the basis of the lowest responsive bid submitted by a bidder meeting the requirements of the Invitation to Bid.

D. Pursuant to 44 CFR 13.36(i)(1), CITY is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Contractor's compliance with the terms of this Agreement, including but not limited to those remedies set forth at 44 CFR 13.43.

E. Pursuant to 44 CFR 13.36(i)(2), CITY may terminate the Agreement for cause or convenience in accordance with the terms of the Agreement and those provided by 44 CFR 13.44.

F. Pursuant to 44 CFR 13.36(i), Contractor shall comply with the following federal laws:

1. Non-Discrimination

Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR chapter 60). During the performance of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

2. Civil Rights

The following requirements will apply to the awarded contract and any sub-contracts:

(1) Age**.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

(2) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.

3. **Compliance with State Energy Policy and Conservation Act. Contractor shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).**

4. Compliance with Clean Air Act. Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

5. Compliance with the Copeland Anti-Kickback Act. Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act. Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5)

7. Pursuant to 44 CFR 13.36(i)(7), Contractor shall comply with FEMA requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41.

8. Pursuant to 44 CFR 13.36(i)(8), Contractor agrees that if this Agreement results in any copyrightable materials or inventions, in accordance with 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of said materials or inventions for Federal Government purposes.

9. Access to Records. In accordance with 44 CFR 13.36(i)(11) and Chapters 119 and 257, Florida Statutes,

(1) The Contractor agrees to provide the City, State, FEMA, 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 the contract for the purposes of making audits, examinations, excerpts and transcriptions.

(2) The Contractor agrees to maintain all books, records, accounts and reports required under the contract for a period of not less than five (5) years after the date of termination or expiration of the contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case Contractor agrees to maintain same until the City, the State, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

(3) In order to comply with Florida's public records laws, the Contractor shall:

a. Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services under the Agreement.

b. Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

d. Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of Contractor upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

10. <u>No Obligation by the Federal Government</u>

(1) Absent the express written consent by the Federal Government, the Federal Government or FEMA is not a party to the contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

G. <u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</u>

(1) <u>Instructions for Certification – Prime Contractor</u>:

(Applicable to all Federal-aid contracts – 44 CFR 13 and 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary 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 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 primary 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 department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary 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," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary 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 primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

i. 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.

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.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

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 debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-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;

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 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal 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 participant shall attach an explanation to this proposal.

(2) <u>Instructions for Certification - Subcontracts</u>:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 44 CFR 13 and 49 CFR 29)

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," "primary covered transaction," "participant," "person," "principal," "proposal," and

"voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non procurement List.

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 -- Subcontracts and Purchase Orders (Lower Tier Covered Transactions):

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 participation in this transaction 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.

H. <u>Certification Regarding Use of Contract Funds for Lobbying</u>

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 44 CFR 13 and 49 CFR 29)

(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 his or her bid or proposal that he or she 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.

EXHIBIT C

FHWA 1273 - REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Non-segregated Facilities
IV. Selected Provisions Related to Davis Bacon
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 Government wide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

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 agreemens 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.

III. Selected Provisions Related to Davis Bacon

2. Intentionally deleted.

3. Intentionally deleted.

4. Intentionally deleted.

4. Intentionally deleted.

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. Intentionally deleted.

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 contacting 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

T h i s p r o v i s i o n i s 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

T h i s p r o v i s i o n i s 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 sub-grantee 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 sub-grantee 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 sub-grantee 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.

Remainder of Page Intentionally Blank