

RESOLUTION NO. 2016-066

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING A POST DISASTER RELIEF AGREEMENT WITH C.A.P. GOVERNMENT SERVICES, INC. TO PROVIDE FOR ADDITIONAL DISASTER RESPONSE AND RECOVERY SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 5, 2006, pursuant to Resolution No. 2007-001, the Town Council approved an Agreement with C.A.P Government services, Inc. (hereinafter "CAP") for plans review and building inspection services; and

WHEREAS, on June 25, 2015, pursuant to Resolution 2015-055, the Town Council approved a new three-year Agreement with CAP, with an optional three-year extension; and

WHEREAS, both CAP and the Town desire to create a post disaster relief agreement for disaster response and recovery services under the terms and conditions as specifically delineated in Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. The above-referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby approves a Post Disaster Relief Agreement with CAP Government Services, Inc. as specifically delineated in Exhibit "A," attached hereto and incorporated herein by reference.

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the modification in substantially the same form as that attached hereto as Exhibit "A," and to make any and all changes necessary and proper to effectuate the intent of this Resolution.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 29th day of September, 2016, on a motion by V/M McKay and seconded by C/M Fisikelli.

Nelson Yes
McKay Yes
Breitkreuz Yes
Fisikelli Yes
Jablonski Yes

Ayes 5
Nays 0
Absent 0

Jeff Nelson, Mayor

ATTEST:

Russell Muñiz
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff
Keith Poliakoff, J.D., Town Attorney

113538262.1

**POST-DISASTER RELIEF AGREEMENT FOR
BUILDING DEPARTMENT SERVICES**

POST-DISASTER RELIEF AGREEMENT FOR BUILDING DEPARTMENT SERVICES ("Agreement") is made and entered into on this 29th day of September 2016 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as "Town") whose address is 13400 Griffin Road, Southwest Ranches, Florida 33330 and C.A.P. Government, Inc. (hereinafter referred to as "Contractor"), whose address is 343 Almeria Avenue, Coral Gables, Florida 33134.

WITNESSETH:

WHEREAS, Contractor currently provides building department services for the Town and the Contractor has agreed to provide disaster response and recovery services to the Town in the event a state of local emergency is declared; and

WHEREAS, this Agreement is necessary in order for the Town to be eligible for FEMA reimbursement for any disaster or emergency event work that Contractor participates/assists in as described herein and as defined in Exhibit 2, on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises, the mutual terms and conditions herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Contractor hereby agree to the following terms and conditions.

Section 1: Scope of Services

1.1 During a declared state of local emergency, the Building Official or Assistant Building Official/Chief Building Code Inspector shall arrive at the Town's Emergency Operations Center ("MEOC") upon the establishment of the MEOC command site, and remain at the site until it's no longer operational or discharged by the Incident Commander. CONTRACTOR shall be responsible for staffing the MEOC when operational and assisting with damage assessment and safety inspections. The Building Official or Assistant Building Official/Chief Building Code Inspector shall have immediate access to building plans and other essential building information.

1.2 CONTRACTOR shall work with the Town during post disaster (natural or man-made) times, in restoring Comprehensive Building Code Services pursuant to the Florida Building Code and executed order of the Governor or Town Administrator. CONTRACTOR shall provide personnel to assist with damage assessment teams. CONTRACTOR shall serve as a resource and consultant in the relevant discipline areas, assisting the operational decision making process and performing other duties as deemed necessary to restore overall safety and services.

1.3 CONTRACTOR shall provide personnel in each discipline who shall be able to respond within one (1) hour (24 hours/day/7 days/week) to any type of emergency call-out by the Town's Fire Rescue, Law Enforcement or any authorized Town representative.

1.4 Contractor shall participate/assist in disaster or emergency event work as defined in Exhibit 2 set forth herein.

1.5 The parties acknowledge and agree that the TOWN will seek recovery of reimbursable expenses from the Federal Emergency Management Agency (FEMA) or other appropriate agencies, if applicable, and therefore the CONTRACTOR shall perform all services in accordance with FEMA guidelines.

1.6 It is the intent of this Agreement for CONTRACTOR to provide disaster recovery technical assistance to TOWN, as required. This service shall include Program Management Assistance.

1.7 CONTRACTOR shall provide and pay for all labor, tools, equipment, transportation, supervision, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the services within the time specified in the Task Authorization.

Section 2: Term of this Agreement

2.1 This Agreement shall continue in full force and effect from the execution date below to until June 25, 2018.

Section 3: Compensation & Method of Payment

3.1 The parties acknowledge that current FEMA guidelines require that all payments be based' on time and material costs for work performed during the first 70 hours of actual work following a disaster event. Payment will only be made for debris that FEMA determines eligible, and only for work Contract Administrator and CONTRACTOR include in the Task Authorization, which shall include sufficient information on the scope of work necessary and the cost to complete the debris collection and disposal process. In the event CONTRACTOR's rates exceed FEMA rates, FEMA rates shall apply.

3.2 CONTRACTOR expressly agrees that it will not be compensated for disposing of any material not defined as eligible debris. The term "eligible debris" shall have that meaning as given under 44 CFR 206.224 and as further defined in the FEMA Debris Management Assistance Policy Guidebook in effect at the time the services are delivered. CONTRACTOR and TOWN will inspect each load to verify that the contents are in accordance with the accepted definition of eligible debris. If any load is determined to contain material that does not conform to the definition of eligible debris, the load will be ordered to be deposited at another landfill or receiving facility. No payment will be allowed for that load, and CONTRACTOR will not invoice TOWN for such loads. For each suitable load picked up, hauled, and processed, a record of the cubic yards shall be recorded by CONTRACTOR and numbered tickets shall be supplied to the TOWN by CONTRACTOR. Copies of each load record will be available to CONTRACTOR and TOWN'S designee on site.

3.3 Contractor shall continue to be paid in accordance with applicable provisions of the Agreement and in accordance with Exhibit 1 herein. Upon the service of a notice of termination in accordance with paragraph 2.1 above, Contractor shall be paid for services rendered in accordance with the Agreement through the effective date of the termination. For example, if a Termination Notice is served, Contractor shall be paid for any services properly rendered through the expiration of the subsequent Monthly Period. If the Town serves an Immediate Termination Notice, Contractor shall be paid for any services properly rendered through the date of service of the Immediate Termination Notice.

3.4 Notwithstanding anything to the contrary in the Agreement or herein, Town shall not be liable for any cost increases or escalation associated with labor, services, materials, equipment or

any other costs that may arise during the term of the Agreement, as extended hereby. In the event the cost of the Work exceeds the amounts defined in the Agreement, Contractor shall pay such excess from its own funds and Town shall not be required to pay any part of such excess. The only exception shall be any adjustments to the Contract Price pursuant to any written Change Order duly executed by Town and Contractor in accordance with the terms and conditions of the Agreement, and with the same formality and of equal dignity associated with the original execution of the Agreement.

SECTION 4: FEMA REIMBURSEMENTS

4.1 CONTRACTOR shall assist the TOWN in completing any and all forms necessary for reimbursements from state or federal agencies, including but not limited to the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHA) or designated local agencies, relating to costs arising out of debris management. This may include, but is not limited to, the timely completion and submittal of reimbursement requests, preparation, and submittal of any and all necessary cost substantiation and preparing replies to any and all agency denial or inquiries. This service shall be provided, as required, at no additional cost to TOWN.

4.2 During the FEMA or FHA audit phases, CONTRACTOR shall make available all records related to the performance of the services under this Agreement.

Section 5: FEDERAL-AID REQUIREMENTS

5.1 Contractor shall comply with the following basic federal-aid requirements that must be followed for emergency repair projects and permanent restorations projects. These requirements apply to all state and local agency contracts for both emergency and permanent restoration types of projects. These agency contracts cannot be waived just because there is a State or FEMA emergency declaration.

5.2. Federal Highway Administration Emergency Relief Program:

A. The parties acknowledge that from time to time, if applicable, the TOWN may seek reimbursement involving the Federal Highway Administration (FHWA) Emergency Relief Program funds. CONTRACTOR acknowledges that, if applicable, CONTRACTOR will be required to adhere to additional requirements that include:

- (1) Compliance with Davis-Bacon wage rates.
- (2) Coordination with the State of Florida Department of Transportation to assure compliance with the requirements of the National Environmental Policy Act (NEPA) of 1969;
- (3) Compliance with all requirements of the Americans with Disabilities Act of 1990 (ADA), the regulations of the Federal government issued thereunder, and assurance by the Local Government pursuant thereto;
- (4) Compliance with the Federal "Buy America Requirements", a copy of which is attached hereto and incorporated herein as Exhibit "D";

- (5) Required contract provisions for Federal-Aid Construction Contracts (FHWA-1273), attached hereto and incorporated herein as Exhibit "D";
- (6) Compliance with CFR Part 26, Disadvantaged Business Enterprise Program including the requirement to report monthly on the Equal Opportunity Reporting System; and
- (7) Compliance with the convict labor prohibition in 23 U.S.C. 114. Convict labor cannot be used in Emergency Relief Construction projects.

The parties acknowledge that the current agreement between the parties is strictly for debris removal work and that the Davis-Bacon and related acts (DBRA) provisions do not apply; however, pursuant to the requirements of FHWA, these provisions are required to be incorporated as part of this Agreement for if and when they would become applicable. Therefore, FHWA-1273 is attached hereto and incorporated herein as Exhibit "D".

- B. In accordance with FHWA-1273, the CONTRACTOR acknowledges and agrees that thirty percent (30%) of the work must be performed with its own forces.
- C. In addition to the above, there are additional procedures necessary to receive reimbursement from FHWA for disaster recovery services on "On-System" and "Off-System" roadways as summarized in the Scope of Services. The CONTRACTOR acknowledges and agrees that it is knowledgeable of these requirements, incorporated as part of the Florida Department of Transportation Contract Nos. Z4004-RO and Z4007-RO, and shall adhere to same as amended from time to time.
- D. CONTRACTOR acknowledges and agrees to adhere to all requirements of the Federal Emergency Management Agency (FEMA) and that it is knowledgeable of the applicable requirements and guidelines. CONTRACTOR shall adhere to these requirements, as amended from time to time.

Section 6: Miscellaneous Provisions

A. CONTRACTOR shall not enter upon private property for any reason without obtaining permission, and CONTRACTOR shall be responsible for the preservation of all public and private property, along and adjacent to the work site(s) and shall use every precaution necessary to prevent damage and injury thereto. When or where any direct or indirect damage or injury is done to public or private property by or on account of the work, or in consequence of the non-execution thereof on the part of CONTRACTOR, CONTRACTOR shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing or rebuilding or otherwise restoring, as may be directed by the Town Administrator, or he shall make good such damage or injury in an acceptable manner.

B. **Joint Preparation.** Town and Contractor both acknowledge that they have sought and received whatever competent advice and legal counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent

and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

C. Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

D. Truth-in-Negotiation Certificate. Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of the Agreement, as extended hereby, are accurate, complete, and current at the time of contracting.

and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

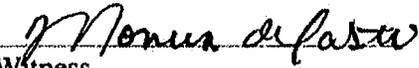
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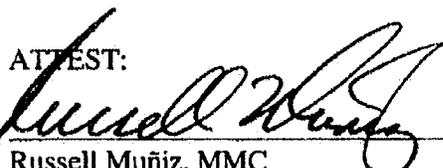
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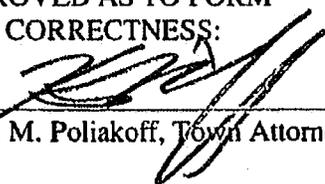
IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: C.A.P. Government, Inc., and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 24 day of September, 2016.

WITNESSES:

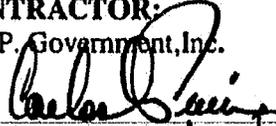

Witness
JOSE E. MIRANDA
Witness print name

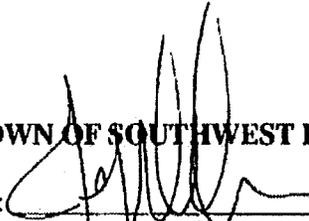

Witness
MONICA De CASTRO
Witness print name

ATTEST:

Russell Muñiz, MMC
Assistant Town Administrator/Town Clerk

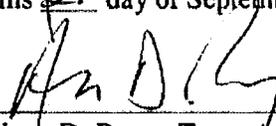
APPROVED AS TO FORM
AND CORRECTNESS:

Keith M. Poliakoff, Town Attorney

CONTRACTOR:

C.A.P. Government, Inc.
By: 
Name: Carlos A. Penn
Date: 10/5, 2016

TOWN OF SOUTHWEST RANCHES
By: 
Jeff Nelson, Mayor

Dated this 29th day of September, 2016

By: 
Andrew D. Berns, Town Administrator

Dated this 29th day of September, 2016

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: C.A.P. Government, Inc., and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the ___ day of _____, 2016.

WITNESSES:

Witness

Witness print name

Witness

Witness print name

CONTRACTOR:

C.A.P. Government, Inc.

By: _____

Name: _____

Date: _____, 2016

TOWN OF SOUTHWEST RANCHES

By: _____

Jeff Nelson, Mayor

Dated this ___ day of September, 2016

ATTEST:

Russell Muñiz, MMC
Assistant Town Administrator/Town Clerk

By: _____

Andrew D. Berns, Town Administrator

Dated this ___ day of September, 2016

**APPROVED AS TO FORM
AND CORRECTNESS:**

Keith M. Poliakoff, Town Attorney

Exhibit 1

ADDITIONAL FEES FOR EMERGENCY MANAGEMENT SERVICES - PROPOSED

Should the foregoing fees be in conflict with the current FEMA reimbursable schedule, the Town shall be governed by FEMA's reimbursable schedule and/or review.

The following is the current hourly rate for C.A.P. Government Services, Inc.

| Title or Description of Staff Position | Rate per Hour |
|-----------------------------------------------|----------------------|
| Principal | \$140 |
| Chief Building Official | \$110 |
| Assistant Building Official | \$100 |
| Discipline Chief Mechanical | \$85 |
| Discipline Chief Electrical | \$85 |
| Discipline Chief Plumbing | \$85 |
| Discipline Chief Structural | \$85 |
| Structural Plans Examiner & Inspector | \$80 |
| Mechanical Plans Examiner & Inspector | \$80 |
| Electrical Plans Examiner & Inspector | \$80 |
| Plumbing Plans Examiner & Inspector | \$80 |
| Administrative Managers | \$80 |
| Permit Technician | \$40 |
| Professional Engineer | \$120 |
| Architect | \$120 |

Exhibit 2 Scope of Work

The Contractor shall assist in pre-need, pre-event services to the Town during disaster or emergency events. Disasters include, natural events such as hurricanes, tornadoes, windstorms, floods and fires, as well as man-made events or emergencies such as civil unrest and terrorist attacks. In the event of a disaster or emergency, the Contractor shall service the Town first and be on-call to provide all support services necessary to insure the safety and well-being of all the Town's property. Contractor may also be called upon throughout the year to render services to assist the Town with special needs and events other than disasters, as determined by the Town Administrator.

Services may include, but not limited to, risk assessments of the Town's property, property damage recommendation(s) to repair Town's property as a result of a disaster or other event, coordination of debris removal throughout the Town and any and all other directives from the Town Administrator or his or her Designee.

Contractor will work under the direction of the Town Administrator or his/her their Designee. The Town Administrator will issue the Notice to Proceed to start work and the notice to reduce resources and to end work.

Notice to Proceed means the written notice given by the Town Administrator or his/her Designee to the Contractor of the date and time for work to start. Work shall commence as soon as possible upon receipt of the Notice to Proceed.

Contractor shall timely provide the Town Administrator or his/her Designee with all accurate and detailed activity reports as deemed necessary by FEMA. Contractor shall work closely with the Town to ensure that all work is FEMA-compliant and all documentation is properly obtained and includes photos, daily activity reports etc. Contractor's failure to utilize federally-approved documentation while performing work may result in nonpayment of service to the Contractor by the Town.

Contractor shall participate in all Town emergency management meetings and exercises.

Contractor shall have professional staff with knowledge, skills and training to manage the disaster recovery process efficiently and effectively. Extensive knowledge of FEMA and FDOT and other applicable Federal, State or local agency regulations and policies are required.

Exhibit 3

EMERGENCY AND DISASTER RESPONSE/RECOVERY SERVICES

NOTICE TO PROCEED

TASK AUTHORIZATION NO.: _____

This Task Authorization is issued between the TOWN OF SOUTHWEST RANCHES and CONTRACTOR as required pursuant to the Post-Disaster Relief Agreement with CAP Government, Inc.

This Task Authorization provides for services in accordance with the Post-Disaster Relief Agreement with CAP Government, Inc. and further detailed in the Scope of Work below,

Payment(s) for such service shall be in accordance with the Contract Documents and must not exceed reasonable limits acceptable to the Federal Emergency Management Agency (FEMA).

Total costs for this Task Authorization shall not exceed \$ _____

SCOPE OF WORK:

Times is of the essence. Work must be completed by _____.

Contract Administrator

Date

Contractor

Date

EXHIBIT 4
BUY AMERICA REQUIREMENTS
AND
FEDERAL-AID CONSTRUCTION CONTRACTS – FHWA-1273

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

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related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State Highway Agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of contract activities under the contract.

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to 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 access to training, including apprenticeship, preapprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

4. Recruitment: Written advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (Included in Appalachian contracts only)

I. GENERAL:

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate supervision and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

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

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 8) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all

each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

II. NONSEGREGATED FACILITIES

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

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, lunchrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conforming under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 4(b)(2) of the Davis-Bacon Act (40 U.S.C. 276c) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

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

2. Classification:

a. The SBA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

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

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

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

3. Payment of Fringe Benefits:

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

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

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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

1. Compliance with Copeland Regulations (29 CFR 5)

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

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the type described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and rates and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out separately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 629-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 5;

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

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (29 CFR 636) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the table shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontractor shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (29 CFR 636).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of

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 12648. 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 nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement 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, bribery, infidelity 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, each prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification-Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 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 12648. 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

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of non-resident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work; (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.