



**CITY OF TAMARAC**  
**NOTICE OF WORKSHOP MEETING**  
**CITY COMMISSION OF TAMARAC, FL**  
**City Hall - Conference Room 105**  
**June 24, 2013**

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**CALL TO ORDER:**

**9:30 a.m.**

**ROLL CALL:**

**PLEDGE OF ALLEGIANCE:**

**Commissioner Patricia Atkins-Grad**

**1. Levy Update**

Levy Update - *Timothy Harper, South Florida Water Management District*

**2. Update on Building Code Violations.**

Update on Building Code Violations - *Chief Building Official/Director Claudio Grande*

**3. TR12355 - Resolution Authorizing the Use of the Agreement Between Southwest Ranches and Sun-Bergeron for Recycling Processing Services**

Item No. 6 (d) on the Consent Agenda. (TR12355) A Resolution of the City Commission of the City of Tamarac, Florida, approving an Agreement with Sun-Bergeron Solid Waste Services Joint Venture providing for Recyclable Material Processing Services utilizing the Agreement between Southwest Ranches and Sun-Bergeron Solid Waste Services Joint Venture; authorizing the appropriate City Officials to execute said Agreement and take all steps necessary to effectuate the intent of the Resolution; providing for conflicts; providing for severability; and providing for an effective date. - *Public Services Director Jack Strain and Budget/Contracts Manager Troy Gies*

**4. TO2283 - Temporary Housing Ordinance**

Item 8 (a) on Ordinances - First Reading: (TO2283) Motion to adopt an ordinance of the City Commission of the City of Tamarac, Florida, **on first reading** amending Chapter 5, entitled "Buildings and Building Regulations," of the City of Tamarac Code of Ordinances by adopting a new article XII, entitled, "Emergency Temporary Housing," to provide for the use of temporary housing during declared housing emergencies; providing for codification; providing for conflicts; providing for severability; providing for an effective date. - *Community Development Director Jennifer Bramley, Chief Building Director Claudio Grande and Housing and Neighborhood Programs Manager Angela Bauldree*

**5. TR12348 - Tamarac Recreation Leases**

Item 6 (b) on the Consent Agenda. (TR12348) A Resolution by the City Commission of the City of Tamarac, finding declaring its intent to enter an agreement with Tamarac Enterprises, Inc., the Behring Foundation, Tams Association, Inc., Tamarac Lakes North Association, Inc. and Tamarac Lakes South Civic Association, Inc., to deed and release any interest the City might have had in the recreational facilities and properties, in order to give effect to the city's prior resolution numbers R-71-12, R-77-177, R-77-187 and R-93-50 to rescind, cancel and terminate any rights and obligations of the City pursuant to the deed restrictions pertaining to Sections 1 and 2 of Tamarac Lakes, the indenture of mortgage, and the agreement dated January 3, 1967, attached hereto as Exhibit "A" and

incorporated herein; directing the appropriate City officials to take any and all action necessary to effectuate the intent of this resolution; providing for conflicts; providing for severability and providing for an effective date. - **Community Development Director Jennifer Bramley**

6. **TR12352 - Resolution Approving the Award for RFP No. 13-11R to SAIC for Disaster Debris Monitoring Services**

Item No. 6 (e) on the Consent Agenda. (TR12352) A Resolution of the City Commission of the City of Tamarac, Florida, approving the award for RFP no. 13-11R to Science Applications International Corporation (SAIC) for Disaster Debris Monitoring Services; authorizing the appropriate City Officials to execute an Agreement with SAIC for Disaster Debris Monitoring Services; providing for conflicts, providing for severability; providing for an effective date. - **Public Services Director Jack Strain**

7. **TR12354 - Resolution Approving the Award of RFP No. 13-10R to Ashbritt, Inc. and Crowder Gulf Joint Venture, Inc. for Disaster Debris Removal and Disposal Services**

Item No. 6 (c) on the Consent Agenda. (TR12354) A Resolution of the City Commission of the City of Tamarac, Florida, approving the Award of RFP No. 13-10R to Ashbritt, Inc. and Crowder Gulf Joint Venture, Inc. for Disaster Debris Removal and Disposal Services; authorizing the appropriate City Officials to execute Agreements with Ashbritt, Inc. and Crowder Gulf Joint Venture, Inc. for Disaster Debris Removal and Disposal Services; providing for conflicts; providing for severability; providing for an effective date. - **Public Services Director Jack Strain**

The City Commission may consider and act upon such other business as may come before it. In the event this agenda must be revised, such revised copies will be available to the public at the City Commission meeting.

Pursuant to Chapter 286.0105, Florida Statutes, if a person decides to appeal any decision made by the City Commission with respect to any matter considered at such meeting or hearing, he may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is based.

The City of Tamarac complies with the provisions of the Americans with Disabilities Act. If you are a disabled person requiring any accommodations or assistance, please notify the City Clerk's Office at (954)-597-3505 of such need at least 48 hours (2 days) in advance. Additionally, if you are hearing or speech impaired and need assistance, you may contact the Florida Relay Service at either of the following numbers: 1-800-955-8770 or 1-800-955-8771.



Patricia Teufel, CMC  
Interim City Clerk



**Title - 9:30 a.m.**

9:30 a.m.

**ATTACHMENTS:**

Name:

Description:

No Attachments Available



## **Title - Commissioner Patricia Atkins-Grad**

Commissioner Patricia Atkins-Grad

### **ATTACHMENTS:**

Name:

Description:

No Attachments Available





## Title - Levy Update

Levy Update - ***Timothy Harper, South Florida Water Management District***

### **ATTACHMENTS:**

Name:

Description:

No Attachments Available



## **Title - Update on Building Code Violations.**

Update on Building Code Violations - ***Chief Building Official/Director Claudio Grande***

### **ATTACHMENTS:**

Name:

Description:

No Attachments Available



**Title - TR12355 - Resolution Authorizing the Use of the Agreement Between Southwest Ranches and Sun-Bergeron for Recycling Processing Services**

Item No. 6 (d) on the Consent Agenda. (TR12355) A Resolution of the City Commission of the City of Tamarac, Florida, approving an Agreement with Sun-Bergeron Solid Waste Services Joint Venture providing for Recyclable Material Processing Services utilizing the Agreement between Southwest Ranches and Sun-Bergeron Solid Waste Services Joint Venture; authorizing the appropriate City Officials to execute said Agreement and take all steps necessary to effectuate the intent of the Resolution; providing for conflicts; providing for severability; and providing for an effective date. - **Public Services Director Jack Strain and Budget/Contracts Manager Troy Gies**

**ATTACHMENTS:**

Name:

Description:

 [TR\\_12355\\_Signed\\_Memo.pdf](#)

TR 12355  
Memo

 [12355 RESO - Sun-Bergeron Recycling.doc](#)

TR 12355  
Reso

 [EX 1 SW Ranches - Solicitation Bid - 032013-Recycle Final.pdf](#)

TR 12355 Ex  
1 IFP

 [Ex 2 Agreement \(Revised\).pdf](#)

Ex 2 -  
Agreement

 [Ex 2 - Attachment A Sun-Bergeron SW Ranches Executed Agreement for Solid Waste Disposal and Recyclables Processing Services.PDF](#)

Ex 2  
Attachment A  
(SW  
Ranches  
Agreement)

 [Ex 2 - Attachment B to Exhibit 2.pdf](#)

Ex 2  
Attachment B  
(Sun-  
Bergeron  
Proposal)

**CITY OF TAMARAC  
INTEROFFICE MEMORANDUM  
PUBLIC SERVICES DEPARTMENT**

**TO: Michael C. Cernech, City Manager    DATE: June 6, 2013**

**THRU: Jack Strain, Public Services  
Director** 

**FROM: Troy Gies, Budget and Contracts**   
**Manager**

**RE: Temp. Reso. 12355 –Agreement  
with Sun-Bergeron for  
Recyclables Processing  
Services, JV – June 26, 2013  
Commission Agenda**

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**Recommendation:**

I recommend the City of Tamarac approve an Agreement between the City of Tamarac and Sun-Bergeron Solid Waste Services, JV ("Sun-Bergeron"), utilizing the Agreement between the City of Southwest Ranches and Sun-Bergeron Solid Waste Services, JV for Recyclables Processing Services, and that this item be placed on the June 26, 2013 Commission Agenda.

**Issue:**

Approval of an Agreement between the City of Tamarac and Sun-Bergeron for Recyclables Processing Services.

**Background:**

In 1986, an Interlocal Agreement was crafted to develop a comprehensive solid waste disposal and resource recovery program. In March 1987, the City of Tamarac executed the ILA and became a Contract Community of the Resource Recovery System (RRS). The system is currently comprised of 27 Contract Communities, including Unincorporated Broward County. The current ILA expires on July 2, 2013, and no extension or replacement ILA has been put in place.

The ILA provides for solid waste disposal via waste-to-energy plants, processing of recovered materials (recycling), along with other related services. The related services include Household Hazardous Waste Disposal, Electronics Recycling, and Bulky/Yard Waste Drop-off location. This proposed Resolution addresses the processing of recovered materials and the operation of a Materials Recovery Facility (MRF).

The City of Southwest Ranches published an Invitation for Proposals (IFP) for Solid Waste Disposal and Recyclables Processing Services. The City of Southwest Ranches received, reviewed and evaluated submittals from three (3) vendors and recommended award to Sun-Bergeron. It is important to note, that Sun-Bergeron was the second-highest bidder in this procurement process for recyclables processing. However, the highest-bidder (Ecological Paper) is an unknown vendor with processing facilities in northern Dade County; and the Southwest Ranches Evaluation Committee selected Sun-Bergeron as the overall most

advantageous submittal. In fact, a recyclables processing location outside of Broward County would be problematic for the City of Tamarac; considering this information, City of Public Services Staff concurs with Southwest Ranches' evaluation and ranking.

Public Services staff evaluated the IFP and subsequent Agreement between Southwest Ranches and Sun-Bergeron, and determined it would be advantageous to the City to utilize the Agreement for Recyclables Processing Services for the City of Tamarac.

The revenue from recyclable materials processed under this Agreement is determined by the Average Market Value (AMV) of the recycled material, the Contractor's Fee, which is deducted from the AMV and the Revenue Share Percentage of the remaining Revenue per Ton. In the Southwest Ranches IFP the Contractors Fee is set at \$50.00 per ton and the vendor's were asked to propose the Revenue Share Percentage.

Furthermore, Public Services staff evaluated and compared the terms and conditions of the Southwest Ranches / Sun-Bergeron Agreement with a competitively bid Agreement awarded by the City of Deerfield Beach, along with the non-winning submittals in these procurement processes, and a proposed temporary/interim rate by Waste Management. Based upon that evaluation, Public Services staff is recommending utilization of the Southwest Ranches Agreement.

It is important to note that the Agreement between the City of Southwest Ranches and Sun-Bergeron includes a Most-Favored-Nation Clause. This clause was in effect when Sun-Bergeron submitted a more favorable revenue submittal in the Deerfield Beach RFP; and, therefore, the revenue in the Agreement between the City of Tamarac and Sun-Bergeron reflects this more favorable rate. Specifically, the original Program Recyclables Revenue Bid Percentage was 40% and the current effective rate is 45.01%.

Below is a partial comparison of the estimated revenue to the City of Tamarac from the respective firms from the Southwest Ranches RFP, Deerfield Beach RFP, and the interim / temporary proposal to Tamarac by Waste Management:

Vendor	AMV*	-	(Contractors Fee)	X	Revenue Share Percentage	=	Revenue per Ton	Estimated Annual Revenue	
Sun-Bergeron (Deerfield)	138.84	-	50.00	X	45.01%	=	\$ 39.99	\$ 168,057.28	See note below
Sun-Bergeron (SW Ranches)	138.84	-	50.00	X	**45.01%	=	\$ 39.99	\$ 168,057.28	
WM (Tamarac)	138.84	-	66.40	X	35.00%	=	\$ 25.35	\$ 73,910.82	
WM (Deerfield)	138.84	-	50.00	X	6.00%	=	\$ 5.33	\$ 22,402.66	

\* Assuming March 2013 AMV used for SW Ranches Bid Evaluation

\*\*SW Ranches contract has Most-Favored Nations Clause; initial rate of 40.0% increased to 45.01% to match the Deerfield Contract Rate

### **Agreement Summary**

The following is a summary of the proposed Agreement with Sun-Bergeron for Recyclables Processing Services.

The proposed Agreement, if executed, would take effect on July 3, 2013 and would be in effect for five years with two (2) additional optional five year terms.

The SW Ranches/Sun-Bergeron Agreement includes a true “floor” or minimum revenue rate, which is zero. This means, however unlikely, if the AMV were to fall below the Contractor’s Fee (\$50), the City would never have to make up the difference.

Additionally, as noted above, the SW Ranches/Sun-Bergeron Agreement includes a “Most-Favored-Nations” Clause, which states that if Sun-Bergeron is awarded a contract of similar terms at a better rate, that rate would be made effective in the SW Ranches contract.

**Fiscal Impact:**

There are no direct costs associated with this Resolution and proposed Agreement; however the City of Tamarac would receive \$39.99 per ton of recyclable material based on the Agreements and current AMV. Using current rates of recycling in the City, this is estimated to be \$168,000 annually. This revenue is subject to change with the amount of recycling collected in the City and with changes to the AMV.

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2013\_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, APPROVING AN AGREEMENT WITH SUN-BERGERON SOLID WASTE SERVICES JOINT VENTURE PROVIDING FOR RECYCLABLE MATERIAL PROCESSING SERVICES UTILIZING THE AGREEMENT BETWEEN SOUTHWEST RANCHES AND SUN-BERGERON SOLID WASTE SERVICES JOINT VENTURE; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE SAID AGREEMENT AND TAKE ALL STEPS NECESSARY TO EFFECTUATE THE INTENT OF THE RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, in the mid-1980s, the state and federal governments have discouraged the use of landfills as the sole method of disposal of solid waste; and

WHEREAS, the State of Florida via The Energy, Climate Change, and Economic Security Act of 2008 (House Bill 7135) signed into law by former Governor Crist created Section 403.7032, Florida Statutes, which established a new statewide recycling goal of 75% to be achieved by the year 2020; and

WHEREAS, the City of Tamarac Strategic Goal #5 "A Vibrant Community" directs the City to take proactive measures to preserve and enhance community appearance and maintain a safe built environment; and

WHEREAS, on March 22, 2013 the Town of Southwest Ranches published IFB 13-001 ("IFP") for comprehensive solid waste services, including processing of recyclable

materials, hereto attached as Exhibit 1; and

WHEREAS, the Town of Southwest Ranches received submissions from three vendors, and the Town of Southwest Ranches recommended and approved an Agreement with Sun-Bergeron Solid Waste Services Joint Venture ("Sun-Bergeron"), a copy of the Agreement is hereto attached as "Attachment A to Exhibit 2"; and

WHEREAS, City of Tamarac Public Services staff reviewed the IFP and subsequent Agreement and have determined that the terms and conditions of the Recyclables Processing Portion of the IFP and Agreement, as well as the proposed net revenue rate; and

WHEREAS, Sun-Bergeron has agreed in writing that it has the capacity and capability to honor the terms and conditions of the Agreement with Southwest Ranches and extend them to the City of Tamarac, as well as agreeing that the "Most Favored Nations" clause of the Southwest Ranches Agreement are in effect, and that the Program Recyclables Bid Percentage is currently 45.01%, a copy of the written confirmation is hereto attached as "Attachment B to Exhibit 2"; and

WHEREAS, City of Tamarac Public Services staff determined the terms, conditions, and net revenue rate of the Agreement between Southwest Ranches and Sun-Bergeron would be advantageous to the City; and

WHEREAS, Section 6-148 (f) of the Tamarac Procurement Code provides that the City may purchase goods or services from contracts awarded by other governmental or not-for-profit entities; and

WHEREAS, the Director of Public Services, and the Purchasing and Contracts



Manager recommend executing an Agreement with Sun-Bergeron Solid Waste Joint Ventures for Recyclables Processing Services, hereto attached as "Exhibit 2"; and

WHEREAS, the City Commission of the City of Tamarac, deems it to be in the best interest of the citizens and residents of the City to authorize and execute an Agreement with Sun-Bergeron Solid Waste Services Joint Venture for Recyclables Processing Services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof. All Exhibits attached hereto are hereby incorporated herein and made a specific part of this resolution.

SECTION 2: The City Commission hereby approves the Agreement between the City of Tamarac and Sun-Bergeron Solid Waste Services Joint Venture, attached hereto as "Exhibit 2", utilizing terms, conditions and revenue rates provided as a part of the Town of Southwest Ranches Agreement, and authorizes the appropriate City Officials to accept and execute the Agreement and to take all steps necessary to effectuate the intent of this resolution.

SECTION 3: All Resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

SECTION 5: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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BETH TALABISCO  
MAYOR

ATTEST:

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PAT TEUFEL, CMC  
INTERIM CITY CLERK

I HEREBY CERTIFY that I have  
approved this RESOLUTION as  
to form.

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SAMUEL GOREN  
CITY ATTORNEY

**ADDENDUM #3**  
**“Solid Waste Disposal and Recyclables Processing Services”**  
**IFB #13-003**

The Bid due date is extended to April 29, 2013 at 11:00 a.m.

1. **Section I.B.1.e (p. 4) Will the Town consider allowing Bidders to provide three (3) references of customers to which it has provided household hazardous waste collection events as part of a larger, more encompassing contract for solid waste disposal services?**
  - a. Yes.
2. **Section I.B.1.f. (p. 5) How would the Town like the Bidder to document that its facilities proposed have the capacity to accept the Town’s Solid Waste for the Term of the Contract?**
  - a. Bidders shall provide information regarding current disposal capacity, current tonnage received, as well as expected life of the proposed facilities and any other relevant information it deems necessary to demonstrate capacity.
3. **Section I.B.1.f. (p. 5) Could the Town please define the scope of what constitutes "outstanding compliance issues"?**
  - a. As stated in Section I.B.1.f.(3), Bidders shall provide copies of all notices of violation and consent orders issued to proposed facilities in the last five (5) years. Additionally, Bidders shall indicate any outstanding compliance issues by identifying whether any of these notices of violation are unresolved and whether the Bidder is in compliance with all consent orders. If the Town determines the Bidder has not fully disclosed all compliance issues related to the facilities, the bid will be deemed unresponsive.
4. **Section I.B.2.e.(2) (p. 5) How would the Town like the Bidder to document that its facilities have the capacity to accept the Town’s Program Recyclables for the Term of the Contract?**
  - a. Bidders shall provide information regarding current facility throughput and total capacity.
5. **Section I.B.2.e.(3) (p. 6) Will the Town please define what constitutes “outstanding compliance issues” in Section I.B.2.e.(4)?**
  - a. Please refer to Question 3 above.
6. **Section I.C. (p. 6) Given the expected volume of questions that will be submitted pertaining to this Bid and the turnaround time to get answers back to the bidders, will the Town consider extending the due date of this Bid to allow more accurate responsible and responsive bid submittals?**
  - a. The Town will extend the bid submission deadline to April 29, 2013 at 11:00 a.m..
7. **Section III.A. (p. 8) Will the Town consider making a decision at this moment whether ancillary services will be included in the contract award?**
  - a. The inclusion of ancillary services in the contract award will be a policy decision made by the Town Council following bid submittals.
8. **Section III.B. (p. 8) Is Construction and Demolition Debris exempt from the waste stream required to be delivered to the designated facility?**
  - a. The Town does not control collection and disposal of construction and demolition (C&D) debris; therefore, C&D debris processing and disposal service is not included in this IFB.

**ADDENDUM #3**  
**“Solid Waste Disposal and Recyclables Processing Services”**  
**IFB #13-003**

9. **Section III.C (p. 9) states, “Contractor(s) must be able to begin the services outlined in the IFB on July 3, 2013. In the event that any of the Bidder’s designated facilities will not be operational by July 3, 2013, Bidder must identify interim facilities so that the collection, processing, and disposal operations of the Town are not impacted during the interim operation period.” Yet, Section I. B. 1. c., Page 4 states, “Bidder must have a permitted facility at which the Town’s Solid Waste would be received (“Designated Receiving Facility”), whether the final disposal facility is a transfer station or a processing facility, that is located within a thirty (30) mile driving distance of the Town’s Town Hall (13400 Griffin Road, Southwest Ranches, FL 33330) and that is or will be operational by or before the Commencement Date. Bidder shall provide documentation of driving distance. This appears to be a contradiction. Please clarify.**
  - a. The Designated Receiving Facility does not need to be operational by the Commencement date; however, any interim facility proposed by a Bidder must be properly permitted or licensed and located within a thirty (30) mile driving distance of the Town’s Town Hall (13400 Griffin Road, Southwest Ranches, FL 33330).
10. **Section V. (p. 11) Will ancillary services be included in the bid to determine lowest service fee for disposal services?**
  - a. Please refer to Question 1 of Addendum #2.
11. **Attachment A Draft Agreement Section 3.B.(3) (p. 8) Can the Town explain the method for measuring the daily average delivery vehicle turnaround time from arrival at Designated Facility site to exit from the facility site?**
  - a. Daily average turnaround will be calculated by dividing the total amount of time taken by all vehicles delivering materials by or on behalf of the Town from arrival at the Designated Facility, as determined by the scale house ticket, to exit from the facility by the total number of vehicles delivering Town materials to that facility on a given day. If the Contractor uses tare weights such that delivery vehicles are not weighed outbound and turnaround time becomes an issue, the Contractor shall be required to weigh all outbound delivery vehicles so that the average turnaround time can be calculated.
12. **Attachment A Draft Agreement Section 3.C. (p. 9) Will the Town consider making a decision at this moment whether or not to include ancillary services in the final contract?**
  - a. Please refer to Question 7.
13. **Attachment A Draft Agreement Section 12.A. (p. 25) Will the Town consider adding the following language to the last sentence of the Indemnification of Town clause?  
“provided, however, CONTRACTOR’s indemnification obligation shall not extend to and CONTRACTOR shall not be liable for any, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the TOWN, any TOWN contractor, any public officials, officer, directors, employees, agents, any person or organization directly or indirectly employed by the TOWN or anyone for whose acts any of them may be liable), caused by the TOWN’s (i) breach of this Contract, (ii) violation of applicable law, and (iii) the negligent acts or omissions.”**

**ADDENDUM #3**  
**“Solid Waste Disposal and Recyclables Processing Services”**  
**IFB #13-003**

- a. Section 12.A of the Draft Agreement in Attachment A is modified to read as follows:  
"CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents, and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the breach of this Contract, violation of applicable law, and the negligent acts or omissions of the CONTRACTOR in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property; provided, however, that nothing herein shall be construed to require the CONTRACTOR to indemnify the TOWN or other indemnitee set forth above, for the sole negligence, or willful, wanton or intentional misconduct of the TOWN or other indemnitee set forth above."
14. **Attachment A Draft Agreement Section 15.A.(7) (p. 29) Will the Town consider removing from the 1<sup>st</sup> sentence “or any of the rules and regulations promulgated by the Town pursuant thereto”**
  - a. In the first sentence of this section, the words “or any of the rules and regulations promulgated by the TOWN pursuant thereto” are replaced with “or any of the rules and regulations promulgated by the TOWN pursuant to this Contract.”
15. **Attachment A Draft Agreement Section 15.C. (p. 30) Will the Town consider revising the language to make it more equitable for both parties?**
  - a. Please refer to Question 3 of Addendum #2.
16. **Attachment A Draft Agreement Section 16. (p. 30) Will the Town consider removing the first paragraph, and consider modifying language to reflect that any proposed changes to the agreement would need to be approved by both parties in writing. The second paragraph should be amended to be clear that the change in Town code is due to change in Florida law?**
  - a. Section 16 of the Draft Agreement provided in Attachment A is revised as follows:  
“The TOWN shall have the power to make changes in this Contract as the result of changes in law, TOWN Code, or both to impose new rules and regulations on the CONTRACTOR under this Contract relative to the scope and methods of providing the service specified herein as shall from time-to-time be necessary and desirable for the public welfare. The TOWN shall give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. If a change is required as a result of an amendment to the TOWN's Code, upon receipt of the proposed change, CONTRACTOR shall have ten (10) business days to either accept the change or to terminate this Agreement by providing the TOWN with ninety (90) days written notice of termination. Failure to provide the TOWN with written notice of termination shall constitute acceptance of the proposed change. The scope and method of providing service as referenced herein shall also be liberally construed to include, but they are not

**ADDENDUM #3**  
**“Solid Waste Disposal and Recyclables Processing Services”**  
**IFB #13-003**

limited to, the manner, procedures, operations and obligations, financial or otherwise, of the CONTRACTOR.

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. The CONTRACTOR agrees that the terms and provisions of any TOWN Code of the TOWN related to Solid Waste services and regulations, as it now exists or as it may be amended in the future as a result of any changes in the law, shall apply to all of the provisions of this Contract. In the event any future change in the TOWN Code materially alters the obligations of the CONTRACTOR, then the fee established in the Exhibits to this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The TOWN and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Contract under this Section. The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.”

17. **Attachment A Draft Agreement Section 22. (p. 31) Will the Town consider revising this section to be made mutual. Please consider that the parties should agree to use mediation or arbitration, rather than have it be at the Town’s discretion.**
  - a. Section 22 of the Draft Agreement provided in Attachment A is revised as follows:  
“In addition to any other remedy provided by law, the parties may agree to use arbitration or mediation to resolve any controversy or claim arising out of or relating to this Contract. Any controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event arbitration is agreed to by both parties in writing, such controversy or claim shall be submitted to arbitrators selected from the National Panel of The American Arbitration Association.”
18. **Attachment A Draft Agreement Section 23. (p. 32) Will the Town consider revising this section to be made mutual as well? Please consider that failure to require performance by either party shouldn’t be a waiver for any future breach.**
  - a. Section 23 of Attachment A, the Draft Agreement, remains as stated in the IFB.
19. **Attachment A Draft Agreement Section 29. (p. 33) Will the Town consider inserting the following language prior to the last sentence: “Notwithstanding anything to the contrary contained herein, the CONTRACTOR may assign this Contract to any direct or indirect affiliate or subsidiary of the CONTRACTOR or to any person or entity succeeding to all or substantially all of CONTRACTOR’s assets (whether by**

**ADDENDUM #3**  
**“Solid Waste Disposal and Recyclables Processing Services”**  
**IFB #13-003**

operation of law, merger, consolidation or otherwise) without the written consent of the TOWN.”

a. Section 29 of the Draft Agreement in Attachment A remains as stated in the IFB.

20. **Attachment A Draft Agreement Section 39. (p. 35) How could the Contractor comply with the 75% recycling guarantee if they do not have exclusive control of the entire waste stream and recyclables are being diverted from the waste stream?**

a. Section 39 is replaced as stated in Question 5 of Addendum #2.

21. **Attachment A Draft Agreement Section 39. (p. 35) Given that the State has a goal of reaching a 75% recycling rate by 2020, would the Town consider adopting a method and/or plan that the Bidder can implement to assist with reaching this goal rather than imposing a recycling guaranty?**

a. Section 39 is replaced as stated in Question 5 of Addendum #2.



## **ADDENDUM #2**

### **“Solid Waste Disposal and Recyclables Processing Services”**

#### **IFB #13-003**

**1. Will the Town award the solid waste disposal contract based solely on the solid waste disposal bid price or will the award be based on the cumulative bid price for solid waste disposal and ancillary services?**

- a. To clarify the award process, Section V. CONTRACT AWARD, third paragraph is revised as follows:

“The Town reserves the right to award a disposal contract for Solid Waste disposal only or for Solid Waste disposal and ancillary services (HHW and E-Waste collection events and Drop-Off Bulk Waste collection events), which will be a policy decision made by the Town Council. If a disposal contract for Solid Waste disposal only is to be awarded, the responsive and responsible Bidder with the lowest fee for Solid Waste disposal services will be recommended for award. If a disposal contract for Solid Waste disposal and ancillary services is to be awarded, the responsive and responsible Bidder with the lowest combined fee for Solid Waste disposal services and ancillary services will be recommended for award. The responsive and responsible Bidder with the highest recycling revenue will be recommended for award of a Recyclables processing contract. Final selection of contractors for contract award is subject to approval by the Town Council.”

**2. Will the Town revise Section VII – FORM E, third paragraph, to match the Eligibility requirements in Section I (B)?**

- a. Yes, Bidders shall replace Section VII – FORM E with the attached revised FORM.

**3. Will the Town modify or remove Section 15(C) Termination Without Cause?**

- a. The termination provision remains as stated.

**4. Will the Town modify the Insurance requirements listed in Section 11?**

- a. The insurance requirements are revised as follows:

General Liability	\$1,000,000/\$2,000,000
Automobile Liability	\$1,000,000/\$2,000,000
Pollution Liability	\$1,000,000/\$2,000,000
Worker's Compensation	Statutory Amount

**5. Will the Town modify the Recycling Guaranty requirements listed in Section 39?**

- a. Section 39, RECYCLING GUARANTY is revised as follows:

CONTRACTOR acknowledges the State's seventy-five percent (75%) recycling goal, as defined by Chapter 403, Florida Statutes and applicable regulations promulgated thereunder. In acknowledging the State goal, the CONTRACTOR shall endeavor to divert, as practically feasible, materials for recycling or composting from the Solid Waste delivered by or on behalf of the TOWN, regardless of whether final disposition is a waste-to-energy facility or landfill. Any such diversion shall be recorded and reported to the TOWN on the monthly invoices.

Attachment

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM E**

**BIDDER CONFIRMATION OF QUALIFICATIONS FORM**

Company Name \_\_\_\_\_

The Contract will be awarded only to a responsible and eligible bidder, qualified by experience and capable of providing required insurance, and bonds and in a financial position to do the work specified within the Invitation for Bids, and which can complete the work within the time schedule specified.

At the time of the bid, the Bidder shall hold all Contractor and other qualification certificates and licenses required to be held by the Contractor by Florida Statutes or ordinances of the Town of Southwest Ranches and Broward County in order to perform the work subject of this Invitation for Bids.

All license, certificate and experience requirements must be met by the Bidder, its Subcontractor, or its key personnel collectively referred to as Bidder. Bids submitted by Bidders who do not hold required licenses and certificates or who rely on a Subcontractor to meet the experience criteria will be rejected. By executing this Form and submitting its Bid, Bidder represents that it meets the requirements set forth above, and as set forth in the Bid Documents, and acknowledges and understands that the Town shall be relying on this representation with respect to a contract award.

Bidder:

Bidder's Name: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_

\_\_\_\_\_

Bidder's Phone Number: \_\_\_\_\_

Contractor's License and License number(s) (attach copies of license(s) required for the work described in this IFB):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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State of Florida

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_ (Bidder), who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY Public Records of \_\_\_\_\_ County, Florida

---

Notary Signature

Name of Notary Public: (Print, Stamp, or type as Commissioned)



## **Town of Southwest Ranches**

13400 Griffin Road  
Southwest Ranches, FL 33330-2628

(954) 434-0008 Tel., Town Hall  
(954) 434-1490 Fax

### **ADDENDUM #1**

#### **“Solid Waste Disposal and Recyclables Processing Services”**

#### **IFB # 13-003**

- 1. Name of the company that provides garbage collection for your city?**
  - a. Southern Waste Systems
- 2. Date current contract expires**
  - a. Collection contract expires 9/30/17, with 5 yr renewal at town option
  - b. Recycling contract with Broward Co Resource Recovery System (RRS) expires 7/2/2013
- 3. Amount paid annually to current vendor**
  - a. \$58.50/ton revenue to town from RRS for residential recyclable materials
  - b. \$57/ton paid to Wheelabrator WTE for disposal
- 4. Number of homes in the city?**
  - a. 2,468 residential units
  - b. 96 commercial customers
- 5. Number of residents in the city?**
  - a. 7,345 per 2010 Census
- 6. Specific services provided? MSW, and/or yard waste, and/or recycling collection?**
  - a. MSW, recyclables, bulky waste
  - b. MSW 2x per week
  - c. Single Stream recyclables 1x per week
  - d. Bulky waste every other week (limited to 12 cy/collection)
- 7. Do they have exclusive rights to commercial accounts within the city as well?**
  - a. Yes.

**Juanita Romance**  
**Deputy Clerk**  
**March 28, 2013**

# TOWN OF SOUTHWEST RANCHES, FLORIDA



**INVITATION FOR BIDS**  
**SOLID WASTE DISPOSAL**  
**AND RECYCLABLES PROCESSING SERVICES**

**IFB No. 13-003**

Date: March 22, 2013

**Opening: 11:00 a.m. April 22, 2013**

**Submit To:** Juanita Romance, Deputy Town Clerk  
13400 Griffin Road  
Southwest Ranches, Florida 33330-2628

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**TABLE OF CONTENTS**

I.	IFB PROCESS .....	4
A.	Purpose.....	4
B.	Eligibility .....	4
C.	Schedule.....	6
D.	Bid Submittal .....	6
E.	Bid Security .....	6
F.	Questions.....	7
G.	Addenda .....	7
H.	Cone of Silence .....	7
I.	Reserved Rights of the Town.....	7
II.	CURRENT SERVICES, FEES, AND TONNAGE .....	7
III.	SCOPE OF SERVICES .....	8
A.	Disposal Services .....	8
B.	Processing Services.....	9
C.	Contract Term .....	9
D.	Other Terms and Conditions .....	9
IV.	SUBMITTAL REQUIREMENTS.....	9
A.	General Instructions .....	9
B.	Bid Content .....	10
V.	CONTRACT AWARD .....	11
VI.	REQUIRED FORMS .....	11
A.	Bidder Response Form.....	11
B.	Disposal Fee and Collection Events Fees Price Form .....	11
C.	Program Recyclables Revenue Form.....	11
D.	Certificate of Authority Forms.....	11
E.	Qualifications Statement .....	11
F.	Acknowledgement of Addenda.....	11

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

---

G. References.....	11
H. Public Entity Crimes .....	11
I. Drug Free Workplace.....	11
J. Non Collusive .....	11

Attachment A Draft Contract



# TOWN OF SOUTHWEST RANCHES, FLORIDA

## Invitation for Bids

IFB No. 13-003

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### **I. IFB PROCESS**

#### **A. Purpose**

The Town of Southwest Ranches, Florida, hereinafter referred to as the “Town,” is soliciting bids from responsive and responsible Bidders to provide Solid Waste Disposal Services and Recyclables Processing Services. The Town reserves the right to award one contract for both services or to award two contracts, one for each service, depending on what is in the best interest of the Town. Bidders are not required to bid on both of the services.

The terms used in this Invitation to Bid (IFB) are as defined in the Draft Contract in **Attachment A**.

#### **B. Eligibility**

To be eligible to respond to this IFB, the Bidder must demonstrate that it, or its subcontractors, meets the minimum qualification requirements as set forth in this section.

1. Minimum Qualifications to provide Solid Waste disposal services: Bidder must provide documentation that it meets the following minimum qualifications to provide Solid Waste disposal services.
  - a. Bidder or its key personnel must have at least five (5) years experience in providing disposal services.
  - b. Bidder must have a permitted disposal facility with the capacity to receive and dispose of the Town’s Solid Waste for the term of the Contract (“Designated Disposal Facility”). The Town reserves the right to conduct a site visit as part of this evaluation process.
  - c. Bidder must have a permitted facility at which the Town’s Solid Waste would be received (“Designated Receiving Facility”), whether the final disposal facility, a transfer station, or a processing facility, that is located within a thirty (30) mile driving distance of the Town’s Town Hall (13400 Griffin Road, Southwest Ranches, FL 33330) and that is or will be operational by or before the Commencement Date. Bidder shall provide documentation of driving distance.
  - d. Bidder must provide at least three (3) references of customers to which it has provided solid waste disposal services. References shall include name, title, telephone number, e-mail address, mailing address, and a description of the services provided. The service description should include the dates services were provided, the types of materials handled, annual tonnage disposed, and annual cost of services. If available, such references should be representatives of Florida jurisdictions to which the Bidder is currently providing, or has provided, services within the last five (5) years.
  - e. Bidder shall provide, if available, at least three (3) references of customers to which it has provided household hazardous waste collection events. References shall include name, title, telephone number, e-mail address, mailing address, and a description of the services provided. The service description should include the dates services were provided, the types of materials handled, annual quantity of materials handled, and annual cost of services. If available, such references should be

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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representatives of Florida jurisdictions to which the Bidder is currently providing, or has provided, services within the last five (5) years.

- f. The Designated Receiving Facility and Designated Disposal Facility identified to receive the Town's Solid Waste must be capable and permitted to accept materials as proposed. To demonstrate this ability, Bidder must:
  - (1) Provide licenses and/or permits for the facilities proposed or demonstrate the ability to obtain permits for any planned facilities.
  - (2) Document that such facilities have the capacity to accept the Town's Solid Waste for the Term of the Contract.
  - (3) Document that such facilities have no outstanding compliance issues, including but not limited to, notices of violation, consent orders, etc. Bidder must provide copies of all notices of violation and consent orders issued to such facility in the last five (5) years.
2. Minimum Qualifications to provide Recyclables processing services: Bidder must provide documentation that it meets the following minimum qualifications to provide Recyclable Materials processing services.
  - a. Bidder or its key personnel must have at least five (5) years experience in providing processing services.
  - b. Bidder must have a permitted processing facility with the capacity to receive, process, and market the Town's Program Recyclables for the term of the Contract ("Designated Processing Facility").
  - c. Bidder must have a permitted facility at which the Town's Program Recyclables would be received ("Designated Recycling Facility"), whether the final processing facility or a transfer station, that is located within a thirty (30) mile driving distance of the Town's Town Hall (13400 Griffin Road, Southwest Ranches, FL 33330) and that is or will be operational by or before the Commencement Date. Bidder shall provide documentation of driving distance.
  - d. Bidder must provide at least three (3) references of customers to which it has provided recyclables processing services. References shall include name, title, telephone number, e-mail address, mailing address, and a description of the services provided. The service description should include the dates services were provided, the types of materials handled, annual tonnage recycled, and annual revenue paid to the customer. If available, such references should be representatives of Florida jurisdictions to which the Bidder is currently providing, or has provided, services within the last five (5) years.
  - e. The Designated Recycling Facility and Designated Processing Facility identified to receive the Town's Program Recyclables must be capable and permitted to accept materials as proposed. To demonstrate this ability, Bidder must:
    - (1) Provide licenses and/or permits for the facilities proposed or demonstrate the ability to obtain permits for any planned facilities.
    - (2) Document that such facilities have the capacity to accept the Town's Program Recyclables for the Term of the Contract.

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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- (3) Document that such facilities have no outstanding compliance issues, including but not limited to, notices of violation, consent orders, etc. Bidder must provide copies of all notices of violation and consent orders issued to such facility in the past five (5) years.

**C. Schedule**

The following schedule will be followed for this IFB. Firms not in attendance at the pre-Bid meeting shall be considered non-responsive and shall be disqualified from the IFB process.

Issuance of Invitation for Bids .....Friday March 22, 2013  
Mandatory pre-Bid meeting .....Monday April 1, 2013 - 1:00 p.m.  
Deadline for receipt of written questions .....Monday April 15, 2013  
Bid due date .....Monday April 22, 2013

**D. Bid Submittal**

Bids submitted in response to this IFB must be received at the Town Clerk's Office by the date and time specified above. Bids received after this date and time shall be returned to the sender unopened and will not be considered.

Bids must be sealed and the following information should be clearly printed on the outer wrapping: business name, address, and "IFB No. 13-003 for Solid Waste Disposal and Recyclables Processing."

Bids must be mailed or hand delivered to the following address. Bids submitted by facsimile or e-mail or in pencil shall not be accepted.

Juanita Romance, Deputy Town Clerk  
13400 Griffin Road  
Southwest Ranches, Florida 33330-2628

It is anticipated that Bids shall be opened at 11:00 a.m. in the Town Hall Meeting Room, located at 13400 Griffin Road, Southwest Ranches, Florida 33330-2628 on the same date. In accordance with Florida Statutes, Section 119.071, as amended, Bids are exempt from public disclosure until such time as the Town provides notice of an intended award or until thirty (30) days after the opening, whichever is earlier.

Bidders shall be fully acquainted with the conditions relating to the execution of work required in this IFB. Bidders are to thoroughly examine the draft Contract provided in Attachment A. Failure of the Bidder to become acquainted with existing conditions and the scope of services will in no way relieve the Bidder of any obligation with respect to its submittal.

Bids may be withdrawn or modified if requested in writing and signed by a person duly authorized to do so and received at the above address prior to the deadline for submitting Bids. All Bids shall remain in effect for a period of one hundred and eighty (180) days after the last day on which Bids must be submitted.

**E. Bid Security**

A Bid security payable to the Town of Southwest Ranches shall be submitted with the Bid response in the amount of \$10,000. A Bid security can be in the form of a Bid bond or cashier's check. Bid security will be returned to the unsuccessful Bidder as soon as practicable after opening of proposals. Bid security will be returned to the successful Bidder (Contractor) after

# TOWN OF SOUTHWEST RANCHES, FLORIDA

## Invitation for Bids

IFB No. 13-003

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acceptance of the Performance Bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or other conditions as stated in Special Conditions or elsewhere in the IFB.

Failure of the successful Bidder to execute a contract, provide a payment and performance bond, and furnish evidence of appropriate insurance coverage, as provided herein, within thirty (30) days after written notice of award has been given, shall be just cause for the annulment of the award and the forfeiture of the Bid security to the Town, which forfeiture shall be considered, not as a penalty, but as liquidation of damages sustained.

### **F. Questions**

Any questions or requests for clarification or additional information concerning this IFB should be e-mailed to the Deputy Town Clerk:

Juanita Romance, Deputy Town Clerk  
Email: [jromance@southwestranches.org](mailto:jromance@southwestranches.org)  
Phone: 954-434-0008

### **G. Addenda**

Any modifications or clarifications to this IFB shall be by addenda provided in writing to the same businesses to which the original solicitation documents were mailed or otherwise provided. Bidders shall not rely upon oral representations or discussions with Town staff, officials, or the Town's consultants.

### **H. Cone of Silence**

A cone of silence is hereby imposed and made applicable to this IFB and in accordance with the Town's Procurement Code. The cone of silence shall become effective from the time this IFB is advertised, and shall terminate at the time that the Town Council meets to consider the Town Administrator's recommendation as to a final decision regarding a contract award, rejects all responses, or takes other action that ends the IFB process. During the effective time period of the cone of silence, any person or entity that submits a Bid, or that will be subject to evaluation under the terms of this IFB, shall not have any communication with members of the Town Council, the Town Administrator or other professional staff relative to this IFB, except as may be required during such presentations or interviews that are part of the IFB process. Bidders who violate the cone of silence shall be subject to automatic disqualification from further consideration.

### **I. Reserved Rights of the Town**

The Town reserves the right to cancel this IFB or to reject any or all Bids in whole or in part when it is in the best interest of the Town. The Town further reserves the right to waive any informalities or irregularities in any Bids received, to re-advertise the IFB with or without changes in the scope of work, to award a contract in whole or in part, or take any other such actions that may be deemed to be in the best interest of the Town.

## **II. CURRENT SERVICES, FEES, AND TONNAGE**

The Town is currently part of Broward County's Resource Recovery System (RRS). Therefore, all residential and commercial Solid Waste collected by the Town's current franchised collection service provider, Southern Waste Systems (SWS), is delivered to one of the two Wheelabrator

# TOWN OF SOUTHWEST RANCHES, FLORIDA

## Invitation for Bids

IFB No. 13-003

waste-to-energy facilities, currently at a cost of \$57.00 per ton. Residential Recyclable Materials are delivered to the RRS-designated Materials Recovery Facility, and the Town currently receives \$58.50 per ton in revenue for these materials.

The Town's contract with the RRS is set to expire on July 2, 2013. It is the intention of the Town to have a new disposal and recyclables processing contractor(s) in place before the expiration of the current contract.

The Town of Southwest Ranches currently includes 2,468 residential units and approximately 96 commercial customers. Residential collection service includes the following:

- Twice per week manual collection of an unlimited amount of Solid Waste.
- Once per week manual collection of Single Stream Program Recyclables in recycling containers.
- Every other week collection of Bulk Waste (limited to 12 cubic yards per collection). Residential Bulk Waste is collected and disposed by SWS and is not included in this IFB.

The quantities of Solid Waste and Recyclables collected in FY 2012 are as follows:

	Residential Solid Waste	Residential Bulk Waste*	Residential Recyclables	Commercial Solid Waste
FY 2012 Tons	8,251	6,190	443	2,206

\*Note: Residential Bulk Waste tonnage is not subject to this IFB. Town's franchise hauler collects and disposes of this material.

### III. SCOPE OF SERVICES

Bidders may Bid on one or both of the following services.

#### A. Disposal Services

The selected Bidder (Contractor) shall identify, operate, and maintain a Designated Receiving Facility where collection vehicles are able to deliver Solid Waste generated by commercial and residential sources within the Town. The Designated Receiving Facility may be a transfer station, disposal facility, or processing facility. If the Designated Receiving Facility is not also the Designated Disposal Facility, Bidders must identify where Solid Waste will be disposed.

The Town will only consider Bids in which the proposed Designated Receiving Facility is located within a thirty (30) mile driving distance of Town Hall (13400 Griffin Road, Southwest Ranches, FL 33330).

The Contractor, or its subcontractor, must also be capable and willing to provide the ancillary services outlined below. Upon receipt and review of the Bid submittals, the Town will make a policy decision regarding whether these ancillary services will be included in the contract award.

1. The Contractor shall provide four (4) HHW and E-Waste collection events per year (one per calendar year quarter), hereinafter referred to as "HHW Collection Events." Such events shall be conducted within the Town limits at a location to be provided by the Town and on dates to be approved by the Contract Administrator.
2. The Contractor shall provide four (4) drop-off collection events per year (one per calendar year quarter) for Drop-Off Bulk Waste, hereinafter referred to as "Drop-Off

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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Collection Events.” Such events shall be conducted within the Town limits at a location to be provided by the Town and on dates to be approved by the Contract Administrator.

All disposal services are to be conducted according to the terms detailed in the Draft Contract provided in Attachment A, including a recycling guarantee that the Contractor shall achieve an annual recycling rate for all Town waste of at least 75 percent as defined by Chapter 403, Florida Statutes.

**B. Processing Services**

The Contractor shall identify, operate, and maintain a Designated Recycling Facility where collection vehicles are able to deliver Program Recyclables. The Designated Recycling Facility may be a transfer station or materials recovery facility. If the Designated Recycling Facility is not also the processing facility, Bidders must identify where Program Recyclables will be processed.

The Town will only consider Bids in which the proposed Designated Recycling Facility is located within a thirty (30) mile driving distance of Town Hall (13400 Griffin Road, Southwest Ranches, FL 33330).

All processing services are to be conducted according to the terms detailed in the Draft Contract provided in Attachment A.

**C. Contract Term**

The selected Bidder(s) (Contractor) shall begin services on July 3, 2013. The term of the Contract shall be for a period of five (5) years, thus expiring at the end of the day on July 2, 2018. At the option of the Town, and with the concurrence of the Contractor, the Contract may be renewed for two (2) additional terms of five (5) years under the same terms and conditions as the initial term, including amendments, subject to approval by the Town Council.

This IFB is structured to put in place the necessary commitments to provide the services as soon as the Town is relieved of its commitment to the RRS. The Town’s contract with the RRS is set to expire on July 2, 2013, with a Contract Commencement Date of July 3, 2013.

Contractor(s) must be able to begin the services outlined in the IFB on July 3, 2013. In the event that any of the Bidder’s designated facilities will not be operational by July 3, 2013, Bidder must identify interim facilities so that the collection, processing, and disposal operations of the Town are not impacted during the interim operation period.

**D. Other Terms and Conditions**

The Draft Contract in Attachment A provides the additional service and payment requirements and responsibilities of the Contractor, as well as other general contract terms and conditions.

**IV. SUBMITTAL REQUIREMENTS**

**A. General Instructions**

Bids submitted in response to this IFB must be made in the official name of the firm or individual under which business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the person, partnership, company, or corporation submitting the Bid.

## TOWN OF SOUTHWEST RANCHES, FLORIDA

### Invitation for Bids

IFB No. 13-003

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Bidder shall submit one (1) clearly identified original, two (2) copies, and one (1) electronic copy on a CD or flash drive of its Bid in a sealed package following the instructions specified in Section I.D., *Bid Submittal*, of this IFB. Bids should be printed double-sided on paper with at least thirty percent (30%) post-consumer recycled-content. Bidder's name shall be printed at the top of each page of the Bid.

#### **B. Bid Content**

Bids shall have sections as specified below, with each section containing the information described.

1. Bidder Response Form

Bidder must complete this form (Section VI, Form A) in its entirety in ink or typewritten.

2. Minimum Qualifications

To be deemed responsible and responsive, Bidder must demonstrate that it meets or exceeds the Minimum Qualifications listed in Section I. B., *Eligibility*, of this IFB for the services it wishes to provide.

3. Price Forms

The Price Forms are provided in Section VI, *Required Forms*, of this IFB. Bidder wishing to provide Solid Waste disposal services must complete the entire Form B in ink or typewritten, including fees for providing ancillary services as described in Section III.A of this IFB and in the Draft Contract in Attachment A. Bidder wishing to provide Recyclables processing services must complete the entire Form C in ink or typewritten.

Bidder shall provide the service fees and/or Recyclables revenue as all-inclusive unit prices that include supplying all equipment, tools, and labor necessary to perform the Scope of Services provided in this IFB. Service fees will be adjusted annually as detailed in the Draft Contract in Attachment A.

4. Other Required Documents

The items listed below should be included in this section. All forms, which are provided in Section VI of this IFB, should be completed, executed, and notarized (if applicable).

a. Offerer Certification Forms

b. Qualifications Statement

c. Acknowledgement of Addenda

d. References

e. Public Entity Crimes

f. Drug Free Workplace

g. Non Collusive

h. Certificate of Insurance or evidence that the insurance can be provided

i. Bid Security: Bidder must provide a Bid security in the amount of \$10,000. This Bid security shall be in the form of a bond provided by a surety company authorized to do business in Florida, certified check, cashier's check, irrevocable letter of credit, or alternate form of security acceptable to the Town. The Bid securities of unsuccessful

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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Bidders will be returned upon execution of a Contract or until the IFB process is otherwise terminated. The Bid security of the successful Bidder will be retained until the Contract has been executed and the Bidder has furnished the required certificates of insurance and performance bond, as set forth in the Contract.

**V. CONTRACT AWARD**

Selection of a firm shall be in accordance with this IFB and the Town's Procurement Code. The Town also reserves the right to waive minor variations in the specifications and in the bidding process. The Town further reserves the right to accept or reject any and/or all Bids and to award or not award a contract based on this Bid solicitation.

Bids will be evaluated to identify responsive and responsible Bidders. The Town reserves the right to make additional inquiries, request additional information, obtain credit reports, and/or contact other local governments that have contracted with the Bidder. Firms and individuals who do not provide the information requested shall be disqualified from further consideration.

The responsive and responsible Bidder with the lowest service fee for disposal services, which may or may not include the ancillary services described herein, will be recommended for award of a disposal contract. The responsive and responsible Bidder with the highest recycling revenue will be recommended for award of a Recyclables processing contract. Final selection of contractors for contract award is subject to approval by the Town Council.

**VI. REQUIRED FORMS**

The forms provided on the following pages should be completed, signed, and notarized (if applicable). The Price Forms should be included in Section 3 of the Bid submittal and all other forms should be included in Section 4.

- A. Bidder Response Form
- B. Disposal Fee and Collection Events Fees Price Form
- C. Program Recyclables Revenue Form
- D. Certificate of Authority Forms
- E. Qualifications Statement
- F. Acknowledgement of Addenda
- G. References
- H. Public Entity Crimes
- I. Drug Free Workplace
- J. Non Collusive



TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM A**

**BIDDER RESPONSE FORM**

**All Bidders must complete this form in its entirety in ink or typewritten.**

Company Name \_\_\_\_\_

Company Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Authorized Company Representative \_\_\_\_\_

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

E-Mail Address \_\_\_\_\_

**Proposed Facilities for Solid Waste Disposal:**

(If Bidder is not submitting to provide this service, please mark "NA" below)

**Designated Receiving Facility** (i.e., facility where Bidder will accept Solid Waste)

Name of Facility: \_\_\_\_\_

Facility Location: \_\_\_\_\_

**Designated Disposal Facility** (i.e., final disposal destination of Town's Solid Waste)

Name of Facility: \_\_\_\_\_

Facility Location: \_\_\_\_\_

**Proposed Facilities for Recyclables Processing:**

(If Bidder is not submitting to provide this service, please mark "NA" below)

**Designated Recycling Facility** (i.e., facility where Bidder will accept Program Recyclables)

Name of Facility: \_\_\_\_\_

Facility Location: \_\_\_\_\_

**Designated Processing Facility** (i.e., facility where Program Recyclables will be processed)

Name of Facility: \_\_\_\_\_

Facility Location: \_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

**PART VI - FORM B**

**DISPOSAL FEE AND ANCILLARY SERVICE FEE PRICE FORM**

**Bidders wishing to provide Solid Waste disposal services must complete this form in its entirety in ink or typewritten.**

Company Name \_\_\_\_\_

**Solid Waste Disposal Fee**

	A Fee/Ton	B Estimated Tons/Year	C = A x B Estimated Annual Disposal Fees
Solid Waste (residential and commercial)		x 11,000 tons =	

**Ancillary Service Fees**

All Bidders providing a fee for Solid Waste disposal services must also provide prices for ancillary services. The Town will make a policy decision as to whether these ancillary services will be included in the contract award.

**HHW and E-Waste Collection Events**

	A Fee/Event	B Events/Year	C = A x B Estimated Annual Fee
Flat fee for the mobilization of event staff, equipment, and resources needed to conduct collection event		x 4 events =	

**Itemized Disposal and/or Recycling Fees**

In the table on the following page, Bidders should indicate the fee or revenue to be billed or paid to the Town for each material type. Bidder should clearly indicate whether Bid price is a fee, revenue, or no charge. All quantities are listed for Bid purposes only. Town makes no guarantee as to actual tonnage expected.

**TOWN OF SOUTHWEST RANCHES, FLORIDA**

**Invitation for Bids**

**IFB No. 13-003**

	<b>A</b>		<b>B</b>	<b>C = A x B</b>
	<b>Fee Per Pound</b>	<b>Units</b>	<b>Estimated Quantity/Year (pounds)</b>	<b>Estimated Annual Fee</b>
Televisions (all sizes)		Pounds	3,500	
Computer Monitors/Terminals		Pounds	1,100	
CPU's / Laptops		Pounds	1,100	
Large peripherals (printers, scanners, fax machines, plotters, typewriters, etc.)		Pounds	850	
Small peripherals (keyboards, mice, cables, game hardware, external drives, etc.)		Pounds	35	
Telecommunications devices (desk phones, mobile phones, pagers, handheld devices, etc.)		Pounds	125	
Audio/Video equipment (stereos, VCRs, DVD players, radios, tape players, speakers)		Pounds	125	
Copiers		Pounds	125	
UPS (Uninterrupted Power Supply)		Pounds	250	
Small household electrical appliances (microwaves, power tools, health and beauty, etc.)		Pounds	200	
Laptop Batteries		Pounds	125	
Car/Boat Batteries		Pounds	400	
Rechargeable Batteries		Pounds	125	
Lead Acid Batteries		Pounds	200	
Aerosols		Pounds	750	
Corrosives		Pounds	1,250	
Flammable Liquids		Pounds	750	
Flammable Solids		Pounds	250	
Oxidizers		Pounds	1,250	
Oil Paint		Pounds	2,000	
Latex Paint		Pounds	1,500	
Poisons		Pounds	100	
Used Oil/Oil Filters		Pounds	1,100	
Propane Tanks		Pounds	80	
<b>Total Estimated Annual Fee</b>				

\* Quantities listed above are for Bid purposes only and are based on 0.7% of the HHW collected in Broward County in FY 2012. The Town makes no guarantee as to actual tonnage expected.

**Total Drop-Off HHW Service Fee**

**(Annual Flat Fee + Estimated Annual Itemized Fees )**

\_\_\_\_\_

**TOWN OF SOUTHWEST RANCHES, FLORIDA**

**Invitation for Bids**

**IFB No. 13-003**

**Drop-Off Collection Events**

	A Fee/Event	B Events/Year	C = A x B Estimated Annual Fee
Flat fee for the mobilization of event staff, equipment, and resources need to host collection event		x 4 events =	

	A Fee/Ton	B Estimated Tons/Year*	C = A x B Estimated Annual Bulk Waste Disposal Fees
Bulk Waste Disposal Fee		X 200 tons	

\* Quantity listed for Bid purposes only. Town makes no guarantee as to actual tonnage expected.

I, \_\_\_\_\_ (name), the \_\_\_\_\_ (title)

of \_\_\_\_\_  
(bidder) swear or affirm that all information submitted with this bid is true, and that I am authorized to complete this Price Form on behalf of the company.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

**PART VI - FORM C****PROGRAM RECYCLABLES REVENUE FORM**

Company Name \_\_\_\_\_

**Bidders wishing to provide Recyclable Materials processing services must complete this form in its entirety in ink or typewritten.**

Bidder shall enter the percentage of the Average Market Value (AMV) less a Contractor's fee of \$50.00 that it will pay the Town for each Ton of inbound Program Recyclables delivered by the Town or its agents to the Designated Recycling Facility, as determined by the Designated Recycling Facility scales.

The payment per Ton shall be calculated as follows:

1. Each month, the Contractor shall calculate the AMV of the Town's Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in [RecyclingMarkets.net](http://RecyclingMarkets.net) multiplied by the composition percentages of the Town's Program Recyclables, as defined in the table below, which calculates the AMV for March 2013.

**Calculation of the March 2013 Average Market Value**

Material	Index Description	Index Value (Mar '13)	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Newspaper	PS 8 baled, F.O.B. seller's dock	77.5	\$77.50	17.0%	\$13.18
Corrugated containers	PS 11 baled, F.O.B. seller's dock	112.5	\$112.50	10.0%	\$11.25
Mixed paper	PS 1 baled, F.O.B. seller's dock	70	\$70.00	24.5%	\$17.15
Steel cans	\$/Ton, sorted, baled and delivered	115.0	\$115.00	3.7%	\$4.26
Aluminum cans	Cents/lb., sorted, baled and delivered	79.5	\$1,590.00	2.4%	\$38.16
Plastics #3-#7	Commingled (#3-7, cents/lb, baled and picked up)	0.3	\$6.00	5.3%	\$0.32
PET	Cents/lb., baled and picked up	20.8	\$416.00	5.7%	\$23.71
Natural HDPE	Cents/lb., baled and picked up	32.5	\$650.00	2.2%	\$14.30
Colored HDPE	Cents/lb., baled and picked up	25.8	\$516.00	3.2%	\$16.51
Glass (3 Mix)	\$/Ton, delivered	0.0	\$0.00	22.5%	\$0.00
Polycoated Cartons	None at this time	0.0	\$0.00	0.5%	\$0.00
Contamination	N/A	N/A	\$0.00	3.0%	\$0.00
				100.0%	<b>\$138.84</b>

Note: The index values for March 2013 are used for estimation purposes only, and are subject to fluctuation as determined by Secondary Fibers and Material Pricing found on RecyclingMarkets.net. Prices to be used are the first published Regional Average prices for the Southeast USA in the month for which payment is being made. No market index currently exists for polycoated cartons in RecyclingMarkets.net; therefore, the value is set at \$0. When a market index for polycoated cartons or aseptic containers becomes available on RecyclingMarkets.net, it will be utilized.

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

2. A fifty dollar (\$50.00) Contractor's Fee shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A(2) of the draft contract, provided in Attachment A.
3. The Contractor shall pay the Town a percentage, as bid below, of the remaining amount (AMV less Contractor's fee) for each Ton of inbound Program Recyclables delivered during that month.

**Bidder shall enter in the yellow cells, below, the percentage amount that it will pay the Town for inbound Program Recyclables.**

The AMV is intended to be used as a market index and does not necessarily reflect the commodity revenue received by the Contractor; therefore, the Bidder should determine the Bid Percentage accordingly. Any and all costs associated with processing, marketing, and transporting Program Recyclables, including costs for rejects and residue disposal, are the responsibility of the Contractor.

**Program Recyclables Revenue Bid\***

\$138.84	-	\$50.00	X	<div style="background-color: yellow; width: 100px; height: 30px; display: flex; align-items: center; justify-content: center;">%</div>	=	<div style="background-color: yellow; width: 250px; height: 30px; display: flex; align-items: center; justify-content: center;">\$</div>
Jan 2013 AMV		Contractors fee		Bid Percentage		Corresponding revenue per ton based on AMV and Bid Percentage

\* \$/ton based on January 2013 AMV for estimated purposes only, and is subject to monthly market fluctuation, as specified herein.

I, \_\_\_\_\_ (name), the \_\_\_\_\_ (title)

of \_\_\_\_\_  
(bidder) swear or affirm that all information submitted with this bid is true, and that I am authorized to complete this Recyclables Revenue Form on behalf of the company.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM D**

**CERTIFICATE OF AUTHORITY FORM (If Individual/Sole Proprietor)**

Company Name \_\_\_\_\_

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

) ss.

County of \_\_\_\_\_)

I HEREBY CERTIFY that \_\_\_\_\_, as  
Principal or Owner of (Company name) \_\_\_\_\_, is hereby  
authorized to execute the Bid dated \_\_\_\_\_20\_\_\_\_, to the Town of Southwest Ranches  
and his execution thereof, attested by the undersigned, shall be the official act and deed of

\_\_\_\_\_  
(Company name)

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary:

(SEAL)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

---

**PART VI - FORM D**

**CERTIFICATE OF AUTHORITY FORM (If Corporation or Limited Liability Company)**

Company Name \_\_\_\_\_

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

) ss.

County of \_\_\_\_\_)

I HEREBY CERTIFY that a meeting of the Board of Directors of a corporation or authorized representatives of a Limited Liability Company existing under the laws of the State of \_\_\_\_\_, held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED, that \_\_\_\_\_, as President of the Corporation or authorized representative of a Limited Liability Company, be and is hereby authorized to execute the Bid dated, \_\_\_\_\_ 20\_\_\_\_, to the Town of Southwest Ranches and this corporation or Limited Liability Company and his execution thereof, attested by the Secretary of the Corporation or Limited Liability Company, and with the Corporate Seal affixed, shall be the official act and deed of this Corporation or Limited Liability Company."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation or Limited Liability Company this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary:

(SEAL)



TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM D**

**CERTIFICATE OF AUTHORITY FORM (If Partnership)**

Company Name \_\_\_\_\_

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

) ss.

County of \_\_\_\_\_)

I HEREBY CERTIFY that a meeting of the Partners of the \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

A partnership existing under the laws of the State of \_\_\_\_\_, held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED, that, \_\_\_\_\_, as of the Partnership, be and is hereby authorized to execute the Bid dated, \_\_\_\_\_ 20\_\_\_\_, to the Town of Southwest Ranches and this partnership and that his execution thereof, attested by the \_\_\_\_\_ shall be the official act and deed of this Partnership."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

---

Secretary:

(SEAL)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

---

**PART VI - FORM D**

**CERTIFICATE OF AUTHORITY FORM (If Joint Venture)**

Company Name \_\_\_\_\_

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

) ss.

County of \_\_\_\_\_)

I HEREBY CERTIFY that a meeting of the Principals of the \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

A corporation existing under the laws of the State of \_\_\_\_\_, held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED, that, \_\_\_\_\_ as of the Joint Venture be and is hereby authorized to execute the Bid dated, \_\_\_\_\_, 20\_\_\_\_, to the Town of Southwest Ranches official act and deed of this Joint Venture."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have here unto set my hand this \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary:

(SEAL)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM E**

**BIDDER CONFIRMATION OF QUALIFICATIONS FORM**

Company Name \_\_\_\_\_

The Contract will be awarded only to a responsible and eligible bidder, qualified by experience and capable of providing required insurance, and bonds and in a financial position to do the work specified within the Invitation for Bids, and which can complete the work within the time schedule specified.

At the time of the bid, the Bidder shall hold all Contractor and other qualification certificates and licenses required to be held by the Contractor by Florida Statutes or ordinances of the Town of Southwest Ranches and Broward County in order to perform the work subject of this Invitation for Bids.

All license, certificate and experience requirements must be met by the Bidder as opposed to the Subcontractor. Bids submitted by Bidders who do not directly hold required licenses and certificates or who rely on a Subcontractor to meet the experience criteria will be rejected. By executing this Form and submitting its Bid, Bidder represents that it meets the requirements set forth above, and as set forth in the Bid Documents, and acknowledges and understands that the Town shall be relying on this representation with respect to a contract award.

Bidder:

Bidder's Name: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_  
\_\_\_\_\_

Bidder's Phone Number: \_\_\_\_\_

Contractor's License and License number(s) (attach copies of license(s) required for the work described in this IFB):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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State of Florida

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_ (Bidder), who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY Public Records of \_\_\_\_\_ County, Florida

\_\_\_\_\_  
Notary Signature

Name of Notary Public: (Print, Stamp, or type as Commissioned)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM F**

**ACKNOWLEDGEMENT OF ADDENDA FORM**

Company Name \_\_\_\_\_

Proposer shall indicate receipt of addendum by initialing below for each addendum received.

Addendum No.1 \_\_\_\_\_

Addendum No.2 \_\_\_\_\_

Addendum No.3\_\_\_\_\_

Addendum No.4\_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM G**

**GOVERNMENT CONTACT INFORMATION FORM**

Company Name \_\_\_\_\_

Please list **NAME OF AGENCY, ADDRESS, PHONE NUMBER, AND CONTACT PERSON** of any other Governmental Agencies or Quasi-governmental agencies for which you have conducted business on similar project within the past five years.

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

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

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

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM H**

**FLORIDA STATUTES ON PUBLIC ENTITY CRIMES FORM**

Company Name \_\_\_\_\_

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a)**

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

1. This sworn statement is submitted to \_\_\_\_\_  
by \_\_\_\_\_  
for \_\_\_\_\_  
whose business address is \_\_\_\_\_

\_\_\_\_\_ and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Para. 287.133(1) (a), Florida Statutes, means:  
(i). A predecessor or successor of a person convicted of a public entity crime; or  
(ii). An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

---

not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

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

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

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

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

**[Signatures on next page]**



TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

---

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_  
(Type of Identification)

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

My Commission Expires \_\_\_\_\_

(Printed, typed, or stamped commissioned name of notary public)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM J**

**DRUG FREE WORKPLACE FORM**

Company Name \_\_\_\_\_

Bidders must certify that they will provide a drug-free workplace. In order to have a drug-free workplace program, a business shall:

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

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

**BIDDER'S SIGNATURE:** \_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

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**PART VI - FORM I**

**NON COLLUSIVE FORM**

Company Name \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

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

) ss.

County of \_\_\_\_\_)

\_\_\_\_\_ being first duly sworn deposes and

says that:

- (1) He/She is the \_\_\_\_\_  
(Owner, Partner, Officer, Representative or Agent) of  
\_\_\_\_\_ the Bidder that has submitted the attached Bid;
- (2) He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said Bidder 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 Bidder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from bidding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Bidder, firm, or person to fix any overhead, profit, or cost elements of the Bid or of any other Bidder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Bidder, or to secure through 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 Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

---

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_  
(Type of Identification)

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Signature)

My Commission Expires: \_\_\_\_\_

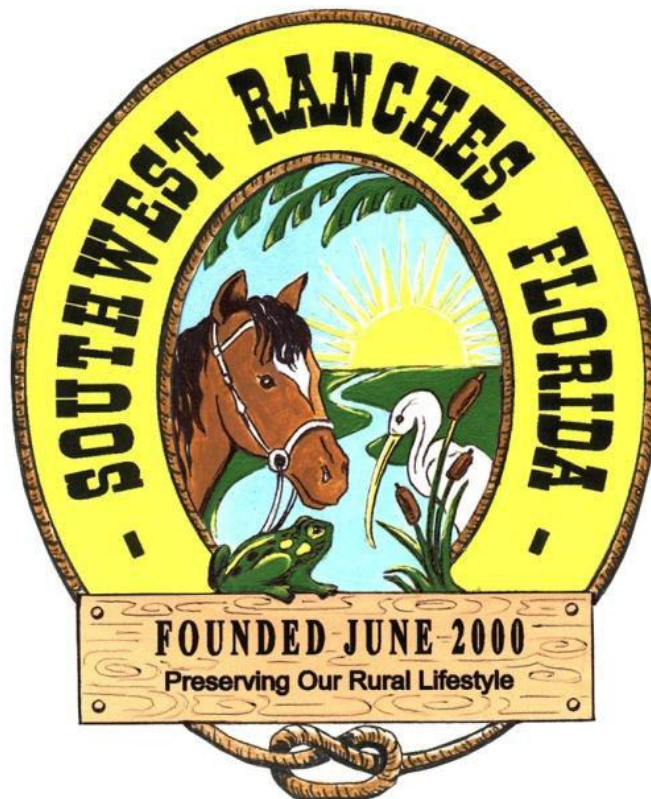
(Printed, typed, or stamped commissioned name of notary public)

ATTACHMENT A

**Draft Agreement**  
**Between**  
**Town of Southwest Ranches**  
**and**

---

**FOR SOLID WASTE DISPOSAL  
AND RECYCLABLES PROCESSING SERVICES**



*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*

## TABLE OF CONTENTS

SECTION 1.	EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM .....	4
SECTION 2.	DEFINITIONS.....	4
SECTION 3.	CONTRACTOR’S DISPOSAL RESPONSIBILITIES .....	7
SECTION 4.	CONTRACTOR’S RECYCLABLES PROCESSING RESPONSIBILITIES .....	14
SECTION 5.	RATES AND BILLING FOR DISPOSAL SERVICE .....	18
SECTION 6.	REVENUE AND PAYMENT FOR RECYCLABLES .....	20
SECTION 7.	CHANGE IN LAW.....	22
SECTION 8.	LIQUIDATED DAMAGES.....	22
SECTION 9.	EMERGENCY SERVICE PROVISIONS.....	23
SECTION 10.	PERFORMANCE BOND.....	24
SECTION 11.	INSURANCE .....	24
SECTION 12.	INDEMNIFICATION OF TOWN .....	26
SECTION 13.	POINT OF CONTACT .....	27
SECTION 14.	NOTICE .....	27
SECTION 15.	TERMINATION OF CONTRACT .....	28
SECTION 16.	MODIFICATIONS TO THE CONTRACT .....	30
SECTION 17.	PERMITS AND LICENSES .....	30
SECTION 18.	INDEPENDENCE OF CONTRACT .....	31
SECTION 19.	FORCE MAJEURE .....	31
SECTION 20.	EMPLOYEE STATUS.....	31
SECTION 21.	EQUAL OPPORTUNITY EMPLOYMENT .....	31
SECTION 22.	MEDIATION .....	31
SECTION 23.	RIGHT TO REQUIRE PERFORMANCE.....	32
SECTION 24.	GOVERNING LAW .....	32
SECTION 25.	CONSENT TO JURISDICTION .....	32
SECTION 26.	LITIGATION.....	32
SECTION 27.	COMPLIANCE WITH LAWS.....	32
SECTION 28.	SEVERABILITY .....	32
SECTION 29.	ASSIGNMENT AND SUBLETTING .....	33
SECTION 30.	MODIFICATIONS.....	33

*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*

SECTION 31.	LEGAL REPRESENTATION .....	33
SECTION 32.	FUND APPROPRIATION .....	33
SECTION 33.	PUBLIC ENTITY CRIME .....	34
SECTION 34.	FINANCIAL INTEREST .....	34
SECTION 35.	ALL PRIOR AGREEMENTS SUPERSEDED .....	34
SECTION 36.	AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS .....	34
SECTION 37.	PIGGYBACK.....	35
SECTION 38.	PAYMENT DISPUTES.....	35
SECTION 39.	RECYCLING GUARANTY .....	35
SECTION 40.	MOST FAVORED PRICING AND MATERIAL TERMS.....	35
SECTION 41.	HEADINGS .....	36
SECTION 42.	EXHIBITS .....	36
EXHIBIT 1	DISPOSAL AND ANCILLARY SERVICES FEES	
EXHIBIT 2	PROGRAM RECYCLABLES REVENUE	

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## **DRAFT AGREEMENT FOR SOLID WASTE DISPOSAL AND RECYCLABLES PROCESSING SERVICES**

Town of Southwest Ranches, Florida

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the Town of Southwest Ranches, a municipal corporation of the State of Florida, Broward County, Florida, hereinafter referred to as "TOWN," and \_\_\_\_\_, authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, the TOWN and CONTRACTOR hereby agree as hereinafter set forth:

### **SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM**

- A. Effective and Commencement Dates The Effective Date of this Contract is the date this Contract is executed and signed by both the TOWN and CONTRACTOR. The Commencement Date is the date that services required pursuant to this Contract commence, or July 3, 2013.
- B. Initial Term The term of this Contract shall be for a five (5) year period beginning on the Commencement Date, July 3, 2013, and terminating July 2, 2018.
- C. Renewal Option At the option of the TOWN and with the concurrence of the CONTRACTOR, this Contract may be renewed for two (2) additional five (5) year terms under the same terms and conditions as the initial term, including amendments, subject to approval by the Town Council.

### **SECTION 2. DEFINITIONS**

For the purpose of this Solid Waste Disposal and Recyclables Processing Agreement, hereinafter referred to as "Contract," the definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the "Solid Waste Ordinance" as contained in the TOWN Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. Average Market Value (AMV) means a market index used to determine the revenue paid by the CONTRACTOR to the TOWN for Program Recyclables delivered to the Designated Recycling Facility based on monthly fluctuations in the commodity market as defined herein.
- B. Biohazardous or Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics (veterinary or otherwise), hospitals (veterinary or otherwise), and other facilities processing waste that may consist of, but are not limited to, human and animal

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parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.

- C. Bulk Trash means those non-vegetative waste items that have not been containerized, bagged, or bundled, and that may require special handling and management including, but not limited to, furniture, white goods, refrigerators, ranges, pool heaters, water softeners, pianos, washers, dryers, water heaters, and other similar appliances, bicycles, electronics, mattresses, household goods, large boxes, barrels, crates, concrete, rubble, mixed roofing materials, rock, gravel and other earthen materials, equipment, wire and cable, materials resulting from home improvements, and any and all household goods that are customary to ordinary housekeeping operations of a residential service unit.
- D. Bulk Waste means the combination of Bulk Trash and Yard Trash collected by the Town's Contract Hauler.
- E. Commencement Date means the date services pursuant to this Contract commence, or July 3, 2013.
- F. Contract means this agreement, including all attachments, schedules, and amendments thereto, between the TOWN and the CONTRACTOR, governing the provision of services as defined herein.
- G. Contract Administrator means the person designated by the Town Administrator to administer and monitor the provisions of this Contract.
- H. Contract Year means twelve (12) consecutive months beginning on the Commencement Date and every twelve (12) months thereafter for the term of the Contract.
- I. CONTRACTOR means that person or entity that has obtained from the TOWN a Contract to provide the services set forth herein.
- J. Contractor-Generated Waste means Bulk Trash and/or Yard Trash generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, lawn or yard maintenance services, and nurseries.
- K. Designated Disposal Facility means the facility designated in this Contract for disposal of the TOWN'S Solid Waste.
- L. Designated Processing Facility means the facility designated in this Contract at which the CONTRACTOR will process Program Recyclables, which facility may be the same as or different than the Designated Recycling Facility.
- M. Designated Recycling Facility means the facility designated in this Contract at which the CONTRACTOR will receive delivery of Program Recyclables, whether such facility is a materials recovery facility, recovered materials processing facility, or a transfer station.
- N. Designated Receiving Facility means the facility at which Solid Waste is received by the CONTRACTOR.

*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*

- O. Drop-Off Bulk Waste means Bulk Waste generated from residential sources within the TOWN and accepted by the CONTRACTOR at a drop-off location as specified in this Contract. For the purposes of this Contract, Drop-Off Bulk Waste shall include residential Bulk Trash and Yard Trash, but not any putrescible waste, commercially generated waste, Contractor-Generated Waste, or Unacceptable Waste, with the exception of tires.
- P. Effective Date means the date this Contract is executed by both the TOWN and CONTRACTOR.
- Q. Electronic Waste or E-Waste means end-of-life or discarded electronic devices or component parts. For the purposes of this Contract, E-Waste includes computers, monitors, laptops, mice, printers, televisions, DVD, Blue Ray, CD or VCR players, copiers, fax machines, cell phones, chargers, rechargeable batteries, scanners, keyboards, stereos, speakers, small appliances, and auto/boat batteries from residential sources, as well as other items mutually agreed upon by the TOWN and CONTRACTOR.
- R. Hazardous Waste means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the State of Florida Administrative Code, or by any current or future Federal, State, or local law.
- S. Holiday means a designated holiday on which the CONTRACTOR shall not be required to provide service. For the purposes of this Contract, Holiday shall only mean Christmas Day unless additional Holidays are approved by the Contract Administrator.
- T. Household Hazardous Waste or HHW means a waste produced in the home containing hazardous substances that may pose a threat to the environment, wildlife, and/or human health. For the purposes of this Contract, HHW includes aerosol products, ammonia, ammunition, anti-freeze, auto fluids, auto batteries, boat batteries, boat fluids, charcoal starter, compact fluorescent bulbs (CFLs), drain cleaner, fertilizers, fire extinguishers, fireworks, flares, fluorescent tubes, gasoline, herbicides, household cleaners, insect killer, kerosene, lawn chemicals, lighter fluid, mercury thermometers, motor oil, nail polish remover, paint, pesticides, photo chemicals, pool chemicals, propane tanks, rechargeable batteries, rust remover, solvents, spot remover, tires, turpentine, weed killer, wood stains, and wood stripper from residential sources, as well as other items mutually agreed upon by the TOWN and CONTRACTOR.
- U. Program Recyclables means Recyclable Materials collected by or on behalf of the TOWN and over which the TOWN has control, including newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, polycoated cartons, and other materials added by mutual agreement of the TOWN and CONTRACTOR.
- V. Recovered Materials means Recyclable Materials which have been processed to market specifications.
- W. Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*

- X. Rejects means materials, other than Residue, that cannot be recycled and that cannot be processed into Recovered Materials.
- Y. Residue means the portion of the Recyclable Material stream accepted by the CONTRACTOR that is not converted to Recovered Materials due to breakage and/or transportation or processing inefficiencies.
- Z. Single Stream means a recycling process that allows for Recyclable Materials to be collected commingled with no sorting required by residents, businesses, or haulers.
- AA. Solid Waste means rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, commercial, agricultural, or governmental operations. For the purposes of this Contract, Solid Waste does not include Recyclable Materials, Unacceptable Waste, residential Bulk Waste, or Solid Waste not controlled by the TOWN.
- BB. Ton means a unit of weight equal to 2,000 pounds, also referred to as a short ton.
- CC. TOWN means the Town of Southwest Ranches, Florida.
- DD. Town's Contract Hauler means the firm that is presently, or that may in the future, contract with the TOWN to collect and transport Solid Waste and Program Recyclables.
- EE. Town Council or Council means the governing body of the Town of Southwest Ranches, Florida.
- FF. Unacceptable Waste means Biohazardous or Biomedical Waste, Hazardous Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, and those wastes under the control of the Nuclear Regulatory Council.
- GG. Work Day means any day, Monday through Saturday, which is not a Holiday as set forth in this Contract.
- HH. Yard Trash means any vegetative matter resulting from normal yard and landscaping maintenance. Yard Trash must be generated from residential sources. Yard Trash includes Christmas trees, but does not include Contractor-Generated Waste.

### **SECTION 3. CONTRACTOR'S DISPOSAL RESPONSIBILITIES**

- A. Designated Facilities
  - (1) The following facility is the Designated Receiving Facility at which Solid Waste will be received by the CONTRACTOR pursuant to this Contract: [Facility name and location to be inserted based on selected Bid.]
  - (2) The following facility is the Designated Disposal Facility at which Solid Waste will be disposed pursuant to this Contract: [Facility name and location to be inserted based on selected Bid.]

*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*

- (3) The Designated Receiving Facility and Designated Disposal Facility may be changed only with prior written approval by the Contract Administrator. The CONTRACTOR shall not take the TOWN'S Solid Waste to any other disposal facility than the Designated Disposal Facility unless prior written approval is given by the Contract Administrator.
- (4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Receiving Facility and Designated Disposal Facility.
- (5) The CONTRACTOR shall ensure that the Designated Receiving Facility and Designated Disposal Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (6) The TOWN shall have the right, during the CONTRACTOR'S hours of operation, to inspect both the operating and maintenance practices of the Designated Receiving Facility and Designated Disposal Facility. Operating practices shall include, but not be limited to, the receipt, loading, storage, transport, and disposal of Solid Waste. The CONTRACTOR shall reasonably accommodate the TOWN'S inspection rights described herein, provided it does not create a safety hazard.

B. Solid Waste Acceptance and Disposal

- (1) Beginning on the Commencement Date, the TOWN shall direct the Town's Contract Hauler to deliver all Solid Waste over which the TOWN has control to the Designated Receiving Facility during the scheduled receiving hours specified herein. The TOWN makes no assurances or guarantees regarding the quantity of Solid Waste that will be delivered to the Designated Receiving Facility.
- (2) Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries of Solid Waste at the Designated Receiving Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Receiving Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (3) The Designated Receiving Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the Designated Facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the TOWN with access to its records to verify vehicle turnaround time within twenty-four (24) hours' notice.
- (4) The Designated Receiving Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Solid Waste delivery vehicles. Such scales shall be inspected and approved

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for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.

- (5) The CONTRACTOR shall weigh all trucks transporting Solid Waste, by or on behalf of the TOWN, that enter the Designated Receiving Facility, record such weights separate from all other materials, and generate reports of incoming Solid Waste as required herein or requested by the TOWN. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.
- (6) Upon acceptance of Solid Waste at the Designated Receiving Facility, the CONTRACTOR shall assume ownership of such Solid Waste. The CONTRACTOR shall bear all costs associated with transporting and disposing of the TOWN'S Solid Waste, including transport to the Designated Disposal Facility, if applicable.
- (7) If Unacceptable Waste is found within a load of Solid Waste delivered by the TOWN or its agents to the Designated Receiving Facility, the CONTRACTOR shall immediately notify the Contract Administrator and note the incident by taking a photograph of the Unacceptable Waste and the truck, including the truck number, and the truck driver's information that delivered the Unacceptable Waste. The CONTRACTOR is responsible for properly isolating, containerizing, and disposing of such Unacceptable Waste in accordance with all applicable laws. The cost of managing and disposing of such Unacceptable Waste shall be borne by the TOWN, provided that the CONTRACTOR has adequately documented that such waste was delivered by or on behalf of the TOWN.
- (8) In the event the CONTRACTOR fails, refuses, or is unable to accept Solid Waste on the Commencement Date or thereafter during the term of the Contract, the CONTRACTOR will be liable for all hauling, processing, transportation, disposal charges, and any other related costs in excess of the Disposal Fee paid to the CONTRACTOR that may be incurred by the TOWN with respect to the disposal of such Solid Waste.

C. Ancillary Services

*(these services will be included in the final contract at the discretion of the TOWN)*

- (1) The CONTRACTOR shall provide four (4) HHW and E-Waste collection events per year (one per calendar year quarter), hereinafter referred to as "HHW Collection Events." Such events shall be conducted within the TOWN limits at a location to be provided by the TOWN and on dates to be approved by the Contract Administrator. Such HHW Collection Event shall be limited to TOWN residents who show official proof of residency.
  - (a) Each HHW Collection Event shall occur on a Saturday and shall last at least six (6) hours in duration or until all residents that have arrived at the location during those hours have been serviced. CONTRACTOR shall arrive at a minimum of one and one-half (1.5) hours prior to the event start time for setup and a pre-event safety meeting.

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- (b) The CONTRACTOR shall be responsible for providing all staff, equipment, and resources needed for the collection, quantifying, packaging and removal of HHW and E-Waste received at each HHW Collection Event.
- (c) The CONTRACTOR shall accept, quantify, log, transfer, recycle, reuse and/or dispose of HHW and E-Waste delivered by TOWN residents to the HHW Collection Event.
- (d) The CONTRACTOR shall provide traffic control, adequate ingress and egress, and adequate staff to prevent long waits for TOWN residents.
- (e) The CONTRACTOR shall ensure that HHW and E-Waste is accepted from TOWN residents only, via valid identification or other means. No commercially generated waste or Contractor-Generated Waste shall be accepted.
- (f) The CONTRACTOR is solely responsible for complying with all local, State, and Federal regulations regarding packaging, recycling, demanufacturing, and transporting E-Waste and HHW, including any and all requirements mandated by federally permitted facilities.
- (g) Upon acceptance of HHW and E-Waste at the HHW Collection Event, the CONTRACTOR shall bear all costs associated with processing, transporting, recycling, reusing, and/or disposing of such materials.
- (h) For invoicing purposes, the CONTRACTOR shall quantify and weigh all materials received during the Drop-Off HHW Collection Event. If any weighing is to be conducted at the HHW Collection Event site, the CONTRACTOR shall utilize a portable scale capable of accurately weighing from one (1) pound to two hundred fifty (250) pounds. The CONTRACTOR is responsible for maintenance, servicing, and certification of scales annually. Copy of scale certifications shall be provided to the TOWN within twenty-four (24) hours after calibration. If weighing is to be done offsite, the facility shall be equipped with a similarly certified portable scale or an adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming HHW delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (i) At least sixty (60) days prior to the Commencement Date, the CONTRACTOR shall provide the TOWN with an Operations Plan detailing the following:
  - Number of staff personnel and minimum level of training of such staff. Drop-Off HHW Site Manager shall receive training in accordance with OSHA 29 CFR §1910.120.
  - List of onsite equipment.
  - Set up of site, including traffic control, ingress and egress, and restricted areas.

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- Methodology detailing how materials will be received and logged and a sample log sheet.
- Methodology detailing how materials will be managed, collated, containerized and/or palletized, tracked, weighed, and/or transported from the HHW Collection Event site to final disposal/recycling facilities.
- Site safety, chemical containment, and spill containment plans.
- Methodology detailing how the CONTRACTOR will ensure accurate invoicing to the TOWN. Methodology shall detail where and how materials will be weighed for invoicing purposes and how the weight of pallets, drums, and other packaging materials will be deducted from gross weight.
- Sample invoice for TOWN review.

The Operations Plan is subject to approval by Contract Administrator.

- (j) Within thirty (30) days of the Commencement Date, the CONTRACTOR shall provide documentation of end markets for all HHW and E-Waste. Documentation may be in the form of (1) letter of agreements/contracts on subcontractor letterhead; (2) copies of agreements/contracts indicating scope of agreement, dates and signatures; or (3) sworn affidavit from CONTRACTOR on contractor letterhead. Such documentation shall specify the materials involved, time period for which agreement or affidavit is valid, and a general description of the material disposition (precious metal recovery, sale to repair facility, resale to public, secondary lead smelter, etc.). The CONTRACTOR shall keep this information current throughout the term of the Contract. Should the environmental or regulatory compliance record of an end market warrant, the TOWN reserves the right to require the CONTRACTOR to change end markets.
- (2) The CONTRACTOR shall provide four (4) drop-off collection events per year (one per calendar year quarter) for Drop-Off Bulk Waste, hereinafter referred to as "Drop-Off Collection Events." Such events shall be conducted within the TOWN limits at a location to be provided by the TOWN and on dates to be approved by the Contract Administrator. Such Drop-Off Collection Events shall be limited to TOWN residents who show official proof of residency.
- (a) Each Drop-Off Collection Event shall occur on a Saturday and shall last at least six (6) hours in duration or until all residents that have arrived at the location during those hours have been serviced. Such events may be scheduled in conjunction with or separate from the HHW Collection Events, as approved by the Contract Administrator.
  - (b) The CONTRACTOR shall be responsible for providing all staff, equipment, and resources needed to conduct each Drop-Off Collection Event.
  - (c) The CONTRACTOR shall accept, transfer, recycle, reuse and/or dispose of Drop-Off Bulk Waste delivered by TOWN residents to the Drop-Off Collection Events.

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- (d) The CONTRACTOR shall ensure that Drop-off Bulk Waste is accepted from TOWN residents only, via valid identification or other means. No commercially generated waste or Contractor-Generated Waste shall be accepted.
- (e) Upon acceptance of Drop-Off Bulk Waste at the Drop-Off Collection Event, the CONTRACTOR shall bear all costs associated with processing, transporting, recycling, reusing, and/or disposing of such materials.
- (f) The CONTRACTOR shall weigh all Drop-Off Bulk Waste materials transferred from Drop-Off Collection Site upon entering the final disposal/recycling facility and record the net weight of the materials by subtracting the weight of the empty vehicle upon exit of the facility. No vehicle tare weights shall be used for Drop-Off Bulk Waste deliveries. The final disposal facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Drop-Off Bulk Waste delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (g) At least sixty (60) days prior to the Commencement Date, the CONTRACTOR shall provide the TOWN with an Operations Plan detailing the following:
  - Number of staff personnel to be on site during operating hours.
  - Set up of site, including traffic control and restricted areas.
  - List of onsite equipment.
  - Logistics of how materials will be received, quantified and logged and a sample log sheet.
  - Site Safety Plan.
  - Methodology detailing how materials will be received, managed, containerized, tracked, weighed, and/or transported from the Drop-Off Collection Event site to final disposal/recycling facilities.
  - Details regarding any processing of Drop-Off Bulk Waste that will take place at Drop-Off Collection Event Site or elsewhere.
  - Methodology detailing how the CONTRACTOR will ensure accurate invoicing to the TOWN. Methodology shall detail where and how materials will be weighed for invoicing purposes.
  - Sample Invoice.

Operations Plan is subject to approval by Contract Administrator.

- (h) Within thirty (30) days of the Commencement Date, the CONTRACTOR shall provide the Contract Administrator with the name of the facility or facilities at which Drop-Off Bulk Waste will be recycled or disposed, including the facility location, contact person, phone number, and email address. The CONTRACTOR shall keep this list current throughout the term of the Contract.

*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*



D. Record Keeping

- (1) The CONTRACTOR shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (2) The CONTRACTOR shall maintain records of the amounts of the TOWN'S Solid Waste received at the Designated Receiving Facility. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR. Records shall distinguish between residential Solid Waste and commercial Solid Waste, and shall provide delivery date and time, vehicle number, and net weight.
- (3) The CONTRACTOR shall maintain such records in accordance with generally accepted management principles and practices. The TOWN shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and CONTRACTOR acknowledges that such laws have possible application and agrees to comply with all such laws.
- (4) The CONTRACTOR shall complete and maintain log sheets, the format of which must be approved by the Contract Administrator, regarding the HHW and E-Waste received at each HHW Collection Event. At a minimum, the CONTRACTOR shall record the number and types (e.g., automobile, pickup truck, trailer, etc.) of vehicles delivering materials, the name and the address of the resident dropping off the HHW and E-Waste, the types of HHW and E-Waste delivered by each resident, and the total amount of HHW and E-Waste collected at each event by type. The log sheets must be verified and signed by the CONTRACTOR and the TOWN and each provided with a copy before any HHW and E-Waste are transported from the collection site.
- (5) The CONTRACTOR shall complete and maintain log sheets regarding the Drop-Off Bulk Waste received at each Drop-Off Collection Event. At a minimum, the CONTRACTOR shall record the number and types (e.g., automobile, pickup truck, trailer, etc.) of vehicles delivering Bulk Waste, the name and the address of the resident dropping off the Drop-Off Bulk Waste, the types and estimated quantities, in cubic yards, of Bulk Waste delivered by each resident, and the total amount (in cubic yards) of Bulk Waste collected at each event.
- (6) The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Contract in accordance with the records retention requirements set forth in Florida Law.

E. Reporting

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a

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format approved by the Contract Administrator. The report shall provide the total tonnage of residential Solid Waste and commercial Solid Waste received at the Designated Receiving Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity. If applicable, the report shall include any tonnage diverted from disposal by the CONTRACTOR.

- (2) Within thirty (30) calendar days after each HHW Collection Event and Drop-Off Collection Event, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the information collected at the HHW Collection Event and Drop-Off Collection Event.
- (3) Within ninety (90) days after each HHW Collection Event and Drop-Off Collection Event, the CONTRACTOR shall provide documentation of disposal and/or recycling, indicating the recycling/demanufacturing/disposal location and certifying that all HHW, E-Waste, and Bulk Waste was handled in accordance with State, Federal, and international rules as they apply.
- (4) Within thirty (30) days after the end of each Contract Year, the CONTRACTOR shall provide the Contract Administrator with a report summarizing the total Tons of residential Solid Waste and commercial Solid Waste delivered to the Designated Receiving Facility during the Contract Year and the net tonnage diverted from disposal (if applicable).
- (5) At least fifteen (15) days prior to the end of each Contract Year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance and performance bond.

#### **SECTION 4. CONTRACTOR'S RECYCLABLES PROCESSING RESPONSIBILITIES**

##### **A. Designated Facilities**

- (1) The following facility is the Designated Recycling Facility at which Program Recyclables will be received by the CONTRACTOR pursuant to this Contract: [Facility name and location to be inserted based on selected Bid.]
- (2) The following facility is the Designated Processing Facility at which Program Recyclables will be processed pursuant to this Contract: [Facility name and location to be inserted based on selected Bid.]
- (3) The Designated Recycling Facility and Designated Processing Facility may be changed only with prior written approval by the Contract Administrator.
- (4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility.

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- (5) The CONTRACTOR shall ensure that the Designated Recycling Facility and Designated Processing Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (6) The TOWN shall have the right, during the CONTRACTOR'S hours of operation, to inspect both the operating and maintenance practices of the Designated Recycling Facility and Designated Processing Facility. Operating practices shall include, but not be limited to, the receipt, separation, processing, loading, storage, and transport of Recyclable Materials and Recovered Materials. The CONTRACTOR shall reasonably accommodate the TOWN'S inspection rights described herein, provided it does not create a safety hazard.

B. Materials Acceptance

- (1) Beginning on the Commencement Date, the TOWN shall direct the TOWN'S Contract Hauler to deliver all Program Recyclables to the Designated Recycling Facility during the scheduled receiving hours specified herein. Program Recyclables will be delivered Single Stream. The TOWN makes no assurances or guarantees regarding the quantity of Program Recyclables that will be delivered to the Designated Recycling Facility.
- (2) Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries of Program Recyclables at the Designated Recycling Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Recycling Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (3) Program Recyclables are as defined in Section 2.U. The TOWN reserves the right to designate or remove other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.
- (4) The Designated Recycling Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the TOWN with access to its records to verify vehicle turnaround time within twenty-four (24) hours notice.
- (5) The Designated Recycling Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Program Recyclables delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (6) The CONTRACTOR shall weigh all trucks transporting Program Recyclables that enter the Designated Recycling Facility, record such weights separate from all other materials, and

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generate reports of incoming Program Recyclables as required herein or requested by the TOWN. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.

- (7) If Hazardous Waste is found within a load of Program Recyclables delivered by the TOWN or its agents to the Designated Receiving Facility, the CONTRACTOR shall immediately notify the Contract Administrator and note the incident by taking a photograph of the Hazardous Waste and the truck, including the truck number and the truck driver's information, that delivered the waste. The CONTRACTOR is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by the TOWN, provided that the CONTRACTOR has adequately documented that such waste was delivered by or on behalf of the TOWN.
- (8) In the event the CONTRACTOR fails, refuses, or is unable to accept Program Recyclables on the Commencement Date or thereafter during the term of the Contract, the CONTRACTOR will be liable for all hauling, processing, transportation, disposal charges and any other related costs, in excess of payments that would have been made under this Contract, which may be incurred by the TOWN with respect to recycling and marketing such materials.

C. Transport, Processing, Marketing, and Disposal

- (1) Upon acceptance of Program Recyclables at the Designated Recycling Facility, the CONTRACTOR shall bear all costs associated with processing or transporting Program Recyclables and marketing and transporting Recovered Materials. The CONTRACTOR is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, resulting from the processing of Program Recyclables.
- (2) Unless the CONTRACTOR has prior written permission from the TOWN, the CONTRACTOR shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. The CONTRACTOR shall not knowingly, or without reasonable assumption, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.

D. Record Keeping

- (1) The CONTRACTOR shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (2) The CONTRACTOR shall maintain records of the amounts of Program Recyclables received at the Designated Recycling Facility. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR.

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- (3) The CONTRACTOR shall maintain such records in accordance with generally accepted management principles and practices. The TOWN shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and CONTRACTOR acknowledges that such laws have possible application and agrees to comply with all such laws.
- (4) The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Contract in accordance with the records retention requirements set forth in Florida Law.

E. Reporting

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Recycling Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity.
- (2) Within thirty (30) days of the end of each Contract Year, the CONTRACTOR shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclables delivered to the Designated Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the CONTRACTOR shall submit a copy of the annual report submitted to FDEP summarizing Recyclable Materials deliveries by type, quantity, and source.
- (3) At least fifteen (15) days prior to the end of each Contract Year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance and performance bond.

F. Public Education and Information

- (1) The CONTRACTOR shall, at no cost to the TOWN, provide an educational presentation at up to two (2) events per Contract Year as requested by the TOWN.
- (2) The CONTRACTOR shall, at no cost to the TOWN, provide tours of the Designated MRF upon at least seven (7) calendar days notice by the TOWN. The CONTRACTOR shall provide personnel (bilingual upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the TOWN and the CONTRACTOR prior to conducting any tours.

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## **SECTION 5. RATES AND BILLING FOR DISPOSAL SERVICE**

### **A. Disposal Fee**

- (1) The per-Ton fee for receipt, management, and disposal of the TOWN's residential and commercial Solid Waste, and providing all related services as specified herein, is as specified in Exhibit 1 of this Contract. This fee is hereinafter referred to as the "Disposal Fee."
- (2) The TOWN shall be responsible for payment of the Disposal Fee for residential Solid Waste, as specified in Section 5.E. The CONTRACTOR shall collect payment for disposal of commercial Solid Waste from the Town's Contract Hauler.
- (3) The Disposal Fee shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Disposal Fee shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual Disposal Fee adjustment exceed three percent (3%) of the Disposal Fee paid by the TOWN during the previous Contract Year.

### **B. Contract Preparation and Administration Expenses.** The CONTRACTOR understands and agrees that the cost of the bid process is a part of the cost of providing disposal service and thus a responsibility of the CONTRACTOR, and even though such costs in the amount of thirty thousand dollars (\$30,000) were initially expended by the TOWN, the expenditure was for the benefit of the CONTRACTOR. Accordingly, CONTRACTOR agrees that any and all monies due CONTRACTOR for the provision of services under this Contract, up to an amount of thirty thousand dollars (\$30,000), will be credited against the CONTRACTOR'S monthly invoices, as follows, as reimbursement for these expenditures:

- (1) Ten thousand dollars (\$10,000) will be credited against payment to the CONTRACTOR for the first month of service.
- (2) The remaining twenty thousand dollars (\$20,000) will be credited against the CONTRACTOR'S monthly invoices at two thousand dollars (\$2,000) per month for ten (10) months, beginning the second month of the Contract term.

### **C. HHW Collection Event Fees**

- (1) The per-event fee for providing all staff, equipment, and resources needed for the HHW Collection Event and the per-item disposal/recycling fees for each type of HHW and E-Waste are as specified in Exhibit 1 of this Contract. These fees are hereinafter referred to as the "HHW Collection Event Fees."

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- (2) The TOWN shall be responsible for payment of the HHW Collection Event Fees, as specified in Section 5.E.
- (3) The HHW Collection Event Fees shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the HHW Collection Event Fees shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual HHW Collection Event Fees adjustment exceed three percent (3%) of the HHW Collection Event Fees paid by the TOWN during the previous Contract Year.

D. Drop-Off Collection Event Fees

- (1) The per-event fee for providing all staff, equipment, and resources needed for the Drop-Off Collection Event and the per-Ton disposal fee for Drop-Off Bulk Wastes are as specified in Exhibit 1 of this Contract. These fees are hereinafter referred to as the "Drop-Off Collection Event Fees."
- (2) The TOWN shall be responsible for payment of the Drop-Off Collection Event Fees, as specified in Section 5.E.
- (3) The Drop-Off Collection Event Fees shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Drop-Off Collection Event Fees shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual Drop-Off Collection Event Fees adjustment exceed three percent (3%) of the Drop-Off Collection Event Fees paid by the TOWN during the previous Contract Year.

E. Invoicing and Payment

- (1) The CONTRACTOR shall submit a monthly invoice, in a form acceptable to the TOWN, detailing the total fees due to the CONTRACTOR for disposal of residential Solid Waste during the previous month. The invoice shall be sent to the following address:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

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- (2) Following each HHW Collection Event, the CONTRACTOR shall submit an itemized invoice, which shall provide the following information:
  - (a) Date and location of HHW Collection Event.
  - (b) Quantities, in pounds, by category, of waste collected.
  - (c) Cost per pound of waste collected by category.
  - (d) Total amount due for the HHW Collection Event.
- (3) Following each Drop-Off Collection Event, the CONTRACTOR shall submit an itemized invoice, which shall provide the following information:
  - (a) Date and location of Drop-Off Collection Event.
  - (b) Quantities, in Tons, of Bulk Waste collected.
  - (c) Cost per Ton of Bulk Waste collected.
  - (d) Total amount due for the Drop-Off Collection Event.
- (4) The TOWN shall remit payment within thirty (30) days of invoice receipt.

## **SECTION 6. REVENUE AND PAYMENT FOR RECYCLABLES**

### **A. Program Recyclables Revenue**

- (1) The CONTRACTOR shall pay the TOWN monthly for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in Exhibit 2:
  - (a) Each month, the CONTRACTOR shall calculate the Average Market Value (AMV) of the Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in Exhibit 2. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
  - (b) A Contractor's Fee of fifty dollars (\$50.00) per Ton shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A.(2).

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- (c) The CONTRACTOR shall pay the TOWN a percentage, as provided in Exhibit 2, of the remaining amount, for each Ton of inbound Program Recyclables delivered to the Designated MRF during that month.
  - (d) If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), the CONTRACTOR shall make no payment to the TOWN and the TOWN shall make no payment to the CONTRACTOR. At no time shall the TOWN make payment to the CONTRACTOR for accepting, processing, or marketing Program Recyclables, regardless of the AMV.
- (2) The Contractor's Fee of fifty dollars (\$50) shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. If the CPI is discontinued or substantially altered, the TOWN may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.
  - (3) The TOWN or CONTRACTOR may conduct a composition study of Program Recyclables delivered to the Designated Recycling Facility. The party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the TOWN. The TOWN reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the TOWN, which shall not be unreasonably withheld. If approved by the TOWN, adjustments to the composition percentages provided in Exhibit 2 shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.
  - (4) The CONTRACTOR acknowledges and accepts that the formula outlined in Section 6.A shall be used for calculating revenue throughout the term of the Contract. It is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the CONTRACTOR differs from the market index or the Contractor's Fee does not accurately reflect the CONTRACTOR'S cost for accepting, processing, and marketing Program Recyclables, the CONTRACTOR shall have taken such items into consideration when bidding the percentage of the AMV less the Contractor's Fee that it will pay to the TOWN. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the CONTRACTOR.

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B. Invoicing and Payment

- (1) No later than the fifteenth (15<sup>th</sup>) day of each month, the CONTRACTOR shall submit a monthly report, in a form acceptable to the TOWN, detailing the total revenue due to the TOWN for the Program Recyclables delivered to the Designated Recycling Facility during the previous month. The report shall be sent to the following address:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

- (2) The CONTRACTOR shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due. Payment shall be remitted to the following:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

**SECTION 7. CHANGE IN LAW**

The CONTRACTOR may petition the TOWN for an additional rate adjustment resulting from a change in law. The CONTRACTOR'S request shall contain substantial proof and justification to support the need for the rate adjustment. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the TOWN, the Town Administrator shall make a determination regarding the fairness of the request, and shall make a recommendation to the Town Council. The Town Council shall consider the request at a regular meeting. If the Town Council approves the request, adjusted rates shall become effective upon the Town Council's approval.

**SECTION 8. LIQUIDATED DAMAGES**

- A. Assessment of Liquidated Damages The Contract Administrator may assess liquidated damages pursuant to this Section on a monthly basis in connection with this Contract and shall, at the end of each month during the term of this Contract, notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, it may request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

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- B. Liquidated Damages for Disposal Service The TOWN may assess liquidated damages against the CONTRACTOR for failing to provide disposal and/or ancillary services in compliance with requirements of this Contract. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, liquidated damages, and not as a penalty, in the following amounts:
1. Failure to accept Solid Waste during scheduled receiving hours (Section 3.B.) \$500 per unaccepted load
  2. Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 3.B.) \$100 per day
  3. Failure to appear at HHW or Drop-Off Collection Events in a capacity satisfactory to accept and transfer materials received. (Section 3.C.) \$2,500 per instance
  4. Failure to submit timely records and reports (Section 3.E.) \$100 per calendar day late
- C. Liquidated Damages for Recyclables Processing Service. The TOWN may assess liquidated damages against the CONTRACTOR for failing to provide recyclables processing services in compliance with requirements of this Contract. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, liquidated damages, and not as a penalty, in the following amounts:
1. Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.B.) \$500 per unaccepted load
  2. Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 4.B.) \$100 per day
  3. Disposing of Recyclable Materials or Recovered Materials without prior approval of the Executive Director (Section 4.C.) \$1,000 per occurrence
  4. Failure to submit timely records and reports (Section 4.E.) \$100 per calendar day late
  5. Failure to make timely payment to the TOWN (Section 6.B.) \$100 per calendar day late

## **SECTION 9. EMERGENCY SERVICE PROVISIONS**

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular service. However, CONTRACTOR shall make its best effort to resume regular service as soon as possible, and no later than resumption of collection service by the Town's Contract Hauler. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal service can be resumed.

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## SECTION 10. PERFORMANCE BOND

- A. Prior to commencing services, the CONTRACTOR shall furnish to the TOWN, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in the amount below.
- (1) The Performance Bond for disposal services shall be in the amount of one hundred twenty-five thousand dollars (\$125,000).
- (2) The Performance Bond for recyclables processing services shall be in the amount of ten thousand dollars (\$10,000).
- B. The Performance Bond shall be executed by a surety company licensed to do business in the State of Florida; having an "A" or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the TOWN.

## SECTION 11. INSURANCE

- 11.1 *Policy limits.* CONTRACTOR shall not commence performance under this agreement until Contractor has obtained all insurance required under this section and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the Town Administrator.

CONTRACTOR shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, single limit, and commencing prior to the commencement of the work and continuing to provide coverage for claims based on occurrences during the Initial Term and any Renewal Term of this Agreement (except for Pollution Liability, which may be provided on a claims made basis) for a minimum of three years from the date of termination or expiration of this Agreement:

<i>General Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Automobile Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Pollution Liability</i>	<i>\$25,000,000/\$50,000,000</i>
<i>Commercial Umbrella</i>	<i>\$25,000,000</i>
<i>Worker's Compensation Statutory Amount</i>	

- 11.2 TOWN as additional insured. The TOWN shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation. All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to TOWN or any other additional insured with respect to claims covered under the policy and (b) Contractor's Insurance applies separately to each insured against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to

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increase the Insurer's limit of liability. Self-insurance by CONTRACTOR shall not be acceptable as providing any of the required insurance coverages required in this Agreement.

- 11.3 Insurance company standards. Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with a minimum rating from A.M. Best Company of A- Excellent: FSC VII.
- 11.4 Notice of cancellation. Contractor agrees to furnish TOWN with at least 30 days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, CONTRACTOR shall furnish, at least ten days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. CONTRACTOR shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.
- 11.5 Minimum level of coverage. To ensure an adequate level of outstanding insurance coverage for claims that arise from CONTRACTOR'S performance under this Agreement, CONTRACTOR shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of twenty-five million dollars (\$25,000,000) after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the five-year period following the term of this Agreement.
- 11.6 Premium payment responsibility. CONTRACTOR shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject. CONTRACTOR shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement, agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- 11.7 If Contractor's Insurance policy is a "claims-made" policy, then CONTRACTOR shall maintain such Insurance Coverage for a period of five (5) years after the expiration or termination of the agreement or any extensions or renewals of the agreement. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- 11.8 If any of Contractor's Insurance policies includes a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this article.
- 11.9 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 11.10 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

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- 11.11 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which TOWN is named as an additional named insured shall not apply to TOWN in any respect. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN'S actual notice of such event.
- 11.12 Notwithstanding any other provisions of this Agreement, CONTRACTOR'S obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

## **SECTION 12. INDEMNIFICATION OF TOWN**

- A. CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents, and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the breach of this Contract, violation of applicable law, and the negligent acts or omissions of the CONTRACTOR in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property.
- B. CONTRACTOR further agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against TOWN, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent rights or for the infringement of any and all copyrights or patent claimed by any person, firm or corporation.
- C. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the TOWN, to defend any action against the TOWN that falls within the scope of this indemnity as set forth above in Subsections A and B, or the TOWN, at the TOWN'S option, may elect not to tender such defense and may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notice from the TOWN, fails to make any payment due under this Contract to the TOWN or fails to perform any obligation required by this Contract, CONTRACTOR shall pay any reasonable attorneys' fees and costs incurred by the TOWN in securing any such payment from CONTRACTOR, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the TOWN that such amount is due, be made by CONTRACTOR prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse the TOWN for same, together with interest thereon

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at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the TOWN that such payment is past due at least twenty (20) days .

- D. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Contract consists of the promises, payments, covenants, rights, and responsibilities contained in this Contract.
- E. The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 23.
- F. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the TOWN in accordance with this Contract.

### **SECTION 13. POINT OF CONTACT**

The day-to-day dealings between the CONTRACTOR and the TOWN shall be between the CONTRACTOR and the Town Administrator or designee.

### **SECTION 14. NOTICE**

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

Andrew Berns, Town Administrator  
Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, Florida 33330

With a copy to:

Keith M. Poliakoff, J.D., Town Attorney  
Law Offices of Becker and Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312

As to the CONTRACTOR: \_\_\_\_\_

With a copy to: \_\_\_\_\_

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Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Facsimile transmission is acceptable notice, effective when received; however, facsimile transmissions received (i.e., printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

## **SECTION 15. TERMINATION OF CONTRACT**

- A. Termination for Cause. The TOWN may cancel this Contract, except as otherwise provided below in this Section, by giving the CONTRACTOR thirty (30) days advance written notice, to be served as provided in Section 26, upon the happening of any one of the following events:
- (1) The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any State thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
  - (2) By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any State thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
  - (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) days; or
  - (4) The CONTRACTOR has defaulted by failing or refusing to pay in a timely manner the administrative charges or other monies due the TOWN and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
  - (5) The CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
  - (6) In the event that the monies due the TOWN under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial

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proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the Town Attorney; or

- (7) The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so, the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate, (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide service for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4<sup>th</sup>) Work Day in order to provide interim Contract service until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN.
- B. Habitual Violations Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Section, in the event that the CONTRACTOR'S record of performance shows that the CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the CONTRACTOR, in the opinion of the TOWN, and regardless of whether the CONTRACTOR has corrected each individual condition of default, the CONTRACTOR shall be deemed a "habitual violator," shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively and shall constitute a condition of irredeemable default. The TOWN shall thereupon issue the CONTRACTOR a final warning citing the circumstances therefore, and any single default by the CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the TOWN may terminate this Contract upon giving of written final notice to the CONTRACTOR, such cancellation to be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice the CONTRACTOR shall cease any further performance under this Contract.

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- C. Termination Without Cause In addition to and notwithstanding any other provisions of the Agreement, this Agreement may be terminated by the TOWN for convenience upon providing the CONTRACTOR with six (6) months written notice.
- D. Effective Date of Termination. In the event of the aforesaid events specified in subsections A, B, and C above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR and upon said date this Contract shall be deemed immediately terminated and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The CONTRACTOR, for failure to perform, shall reimburse the TOWN all direct and indirect costs of providing interim service.

## **SECTION 16. MODIFICATIONS TO THE CONTRACT**

The TOWN shall have the power to make changes in this Contract as the result of changes in law, TOWN Code, or both to impose new rules and regulations on the CONTRACTOR under this Contract relative to the scope and methods of providing the service specified herein as shall from time-to-time be necessary and desirable for the public welfare. The TOWN shall give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing service as referenced herein shall also be liberally construed to include, but they are not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the CONTRACTOR.

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. The CONTRACTOR agrees that the terms and provisions of any TOWN Code of the TOWN related to Solid Waste services and regulations, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Contract. In the event any future change in the TOWN Code materially alters the obligations of the CONTRACTOR, then the fee established in the Exhibits to this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The TOWN and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Contract under this Section. The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

## **SECTION 17. PERMITS AND LICENSES**

The CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect.

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#### **SECTION 18. INDEPENDENCE OF CONTRACT**

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting the CONTRACTOR as an agent, representative or employee of the TOWN for any purpose whatsoever. The CONTRACTOR is to be, and shall remain, an independent contractor with respect to all services performed under this Contract.

#### **SECTION 19. FORCE MAJEURE**

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, State, or Federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Contract for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

#### **SECTION 20. EMPLOYEE STATUS**

Persons employed by the CONTRACTOR in the performance of services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the TOWN'S officers and employees either by operation of law or by the TOWN.

#### **SECTION 21. EQUAL OPPORTUNITY EMPLOYMENT**

CONTRACTOR shall comply with all Federal, State and TOWN laws applicable to the CONTRACTOR services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA") and the South Florida Building Code. The CONTRACTOR is expected to fully comply with all provisions of all laws and the TOWN reserves the right to verify the CONTRACTOR'S compliance with them. Failure to comply with any laws will be grounds for termination of the Contract for cause.

#### **SECTION 22. MEDIATION**

In addition to any other remedy provided by law, the TOWN may agree to use arbitration or mediation to resolve any controversy or claim arising out of or relating to this Contract. Any controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event arbitration is agreed to

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by both parties in writing, such controversy or claim shall be submitted to arbitrators selected from the National Panel of The American Arbitration Association.

### **SECTION 23. RIGHT TO REQUIRE PERFORMANCE**

The failure of the TOWN at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the TOWN thereafter to enforce same, nor shall waiver by the TOWN of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

### **SECTION 24. GOVERNING LAW**

The parties agree that this Contract shall be construed in accordance with and governed by the laws of the State of Florida.

### **SECTION 25. CONSENT TO JURISDICTION**

The parties agree that the jurisdiction for any legal action arising out of or pertaining to this Contract shall be with the State Courts of Florida, and specifically, the County or Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, depending upon the respective jurisdictional limit. Each party further agrees that venue for any action to enforce this Contract shall be in Broward County, Florida.

### **SECTION 26. LITIGATION**

In the event of any litigation which arises out of, pertains to, or relates to this Contract, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

### **SECTION 27. COMPLIANCE WITH LAWS**

The CONTRACTOR shall conduct its operations under this Contract in compliance with all applicable Federal, State and local laws and regulations.

### **SECTION 28. SEVERABILITY**

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

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## **SECTION 29. ASSIGNMENT AND SUBLETTING**

No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.

## **SECTION 30. MODIFICATIONS**

This Contract constitutes the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

## **SECTION 31. LEGAL REPRESENTATION**

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

## **SECTION 32. FUND APPROPRIATION**

The CONTRACTOR understands and agrees that the TOWN, during any fiscal year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Contract shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. CONTRACTOR shall not proceed with services under this Contract without TOWN'S written verification that the funds necessary for CONTRACTOR'S compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The TOWN does not represent that said budget item will be actually adopted, said determination being the determination of the Town Council at the time of the adoption of the budget.

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### **SECTION 33. PUBLIC ENTITY CRIME**

CONTRACTOR understands that a person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the TOWN and may not transact business with the TOWN in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. CONTRACTOR herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Contract.

### **SECTION 34. FINANCIAL INTEREST**

CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the TOWN has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no person who acts in the TOWN as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such person, purchasing agent, TOWN elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

### **SECTION 35. ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or agreements, whether oral or written.

### **SECTION 36. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS**

TOWN shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement during normal business hours. CONTRACTOR shall keep such books, records, and accounts reasonably required to document and substantiate CONTRACTOR'S performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Article 2.5.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by TOWN, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless CONTRACTOR is notified in writing by TOWN of the need to extend the retention period. Such retention of such records and documents shall be at CONTRACTOR'S expense. If any audit has been initiated and audit findings have not been resolved

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at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either Federal or State law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry.

#### **SECTION 37. PIGGYBACK**

It is contemplated that other governmental entities may piggyback upon this Agreement in whole or in part. Such entities may only do so upon the consent of the CONTRACTOR.

#### **SECTION 38. PAYMENT DISPUTES**

If the TOWN disagrees with any amount stated in any invoice from the CONTRACTOR, the TOWN shall notify the CONTRACTOR of such dispute. The TOWN shall make payment to CONTRACTOR of the undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty five (45) days of the TOWN'S notice of such dispute, the parties shall resolve the dispute in a manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to CONTRACTOR, or relieve CONTRACTOR of its obligations to TOWN under this Agreement.

#### **SECTION 39. RECYCLING GUARANTY**

CONTRACTOR guarantees that it shall achieve an annual recycling rate for all TOWN waste, in excess of seventy-five percent (75%) as defined by Chapter 403, Florida Statutes and its applicable regulations promulgated thereunder. Such recycling rate shall be verified based upon the policies and procedures of the State of Florida Department of Environmental Protection. CONTRACTOR shall provide evidence of such recycling rate monthly by providing copies of materials required to be submitted to the State of Florida Department of Environmental Protection for such purposes. Should CONTRACTOR fail to comply with this recycling guarantee of seventy-five percent (75%) of CONTRACTOR'S operations on an annual basis, then it shall pay an annual penalty of twenty-five thousand dollars (\$25,000) to the TOWN within thirty (30) days of the end of the applicable twelve (12) month period, regardless of the number of municipalities or other government entities that may participate under this Agreement.

#### **SECTION 40. MOST FAVORED PRICING AND MATERIAL TERMS**

In the event that CONTRACTOR subsequently enters into an agreement for a term of more than 12 months (including renewal and option periods) for the disposal of another governmental entity's waste with a governmental agency (or a private entity that has been delegated to provide the disposal of solid waste for all or substantially all of the solid waste generated within a governmental entity's jurisdiction) generated anywhere within Miami-Dade, Palm Beach, or Broward County (an "Eligible Agreement"), CONTRACTOR shall provide the TOWN with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the TOWN determines that the Eligible Agreement includes a net disposal charge that is less than the Disposal Services Charge set forth herein, the TOWN may provide written notice to

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CONTRACTOR of TOWN'S determination, and, if the TOWN does so, the Disposal Services Charge shall automatically be reduced to the net disposal charge set forth in the Eligible Agreement, such change to be effective retroactive to the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower net disposal charge (subject to annual adjustments as provided above).

For the purposes of clarification, the "net disposal charge" offered under the Eligible Agreement will be the actual per-ton cost to the counterparty to the Eligible Agreement, and shall be determined net of any costs (e.g., pass-throughs, etc.) paid by such counterparty or economic benefits (e.g., signing bonus, revenue sharing, other credits, etc.) received by such counterparty, except for such economic benefits that are as a result of CONTRACTOR operating a Waste Receiving Facility in such counterparty's jurisdiction.

#### **SECTION 41. HEADINGS**

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

#### **SECTION 42. EXHIBITS**

Each exhibit referred to in this Contract forms an essential part of this Contract. Each such exhibit is a part of this Contract and each is incorporated by this reference.

*Note: The Town may award separate contracts for solid waste disposal and recyclables processing. The final contract(s) will be modified based on whether the contract is for solid waste disposal, recyclables processing, or both services.*



IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.

TOWN OF SOUTHWEST RANCHES, FLORIDA  
A municipal corporation

ATTEST:

By:

\_\_\_\_\_  
Erica Gonzalez-Santamaria, CMC  
TOWN CLERK

\_\_\_\_\_  
Jeff Nelson, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and correctness:

\_\_\_\_\_  
KEITH M. POLIAKOFF, J.D.  
TOWN ATTORNEY

Date: \_\_\_\_\_

ACTIVE: 3839486\_1

CONTRACTOR:

WITNESSES: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT 1**

**DISPOSAL AND ANCILLARY SERVICES FEES**

*[Contractor's Disposal and Ancillary Services Fees (if applicable) Price Form to be inserted.]*

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**EXHIBIT 2**

**PROGRAM RECYCLABLES REVENUE**

*[Contractor's Program Recyclables Revenue Price Form to be inserted.]*

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**AGREEMENT  
BETWEEN THE CITY OF TAMARAC  
AND  
SUN-BERGERON SOLID WASTE SERVICES, JV**

THIS AGREEMENT is entered into on \_\_\_\_\_, 20\_\_ between the City of Tamarac, a municipal corporation with principal offices located at 7525 NW 88<sup>th</sup> Avenue, Tamarac, Florida 33321 (City) and Sun-Bergeron Solid Waste Services, JV with principal offices located at 2380 College Avenue, Davie, Florida 33301 (Contractor) for the purpose of providing Recyclables Processing Services for the City of Tamarac. The parties hereby agree to the following terms and conditions.

1. In return for the right to provide Recyclables Processing Services to the City of Tamarac, Contractor shall comply with the terms and conditions within the Town of Southwest Ranches contract dated May 15, 2013 for Recyclables Processing Services. All terms and conditions of the contract documents set forth in Exhibit A are incorporated herein as if set forth in full, except as modified by the proposal specific to the City of Tamarac as set forth in Exhibit B attached hereto and incorporated herein as if set forth in full.
2. Upon execution of this Agreement, all references made to the Town of Southwest Ranches in Exhibit A and Exhibit B shall be interpreted as pertaining to the City of Tamarac, and all terms and conditions of Exhibit A and Exhibit B shall be deemed as having been implemented for use within the City of Tamarac; however, the Scope of this Agreement shall specifically exclude Solid Waste Disposal Services, including appurtenant ancillary services, as may be referenced in Exhibit A. All references to Solid Waste Disposal Services including appurtenant ancillary services, shall be deleted from the Exhibit A as they may pertain to the City of Tamarac for the purpose of this Agreement. It is understood that wherever the words "agency name" or "agency board name" appear, they shall be read as "City of Tamarac" and "City of Tamarac Commissioners".

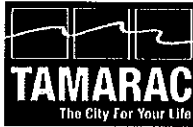
3. Term:

The term of this Agreement shall be for a (5) year period effective on July 3, 2013, or the date of approval of this Agreement, whichever is later. The Agreement term shall run through July 3, 2018. The City reserves the right to renew this Agreement for up to two (2) five (5) terms, in the event that the Agreement is renewed by the Town of Southwest Ranches.

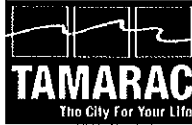
4. This agreement, Exhibit A and Exhibit B constitute the entire agreement between the City and the Contractor. In the event of a conflict between these documents, this Agreement shall prevail, followed in precedence by Exhibit B and Exhibit A in that order.

5. Revenue & Payments

Revenue earned by the City for recyclables shall be paid at the price shown for the specific category or recyclable as shown on the Program Recyclables Revenue Form included as part of the Agreement attached hereto as Exhibit A. All payments under this Agreement shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218.



6. Insurance: In addition to the insurance requirements stated in the Town of Southwest Ranches Agreement, Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid document or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement. The following minimal insurance coverage shall be provided:
- a. Worker's Compensation Insurance: The Contractor shall procure and maintain for the life of this Agreement, Workers' Compensation. Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage must extend to any sub-Contractor that does not have their own Workers' Compensation and Employer's Liability Insurance. The policy must contain a waiver of subrogation in favor of the City of Tamarac, executed by the insurance company. Sixty-(60) days notice of cancellation is required and must be provided to the City of Tamarac via Certified Mail.
  - b. Comprehensive General Liability: The Contractor shall procure and maintain, for the life of this Agreement, Comprehensive General Liability Insurance. This coverage shall be on an "Occurrence" basis. Coverage shall include Premises and Operations; Independent Contractors' Products and Completed Operations and Contractual Liability. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of this Agreement.
  - c. Business Automobile Liability: The Contractor shall procure and maintain, for the life of the Agreement, Business Automobile Liability Insurance.
  - d. The Minimum Limits of Coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability.
  - e. Professional Liability (Errors and Omissions) Insurance: \$1,000,000.
  - f. The City must be named as an additional insured for General Liability coverage unless Owners and Contractors' Protective Coverage is also provided, or required. Sixty (60) days written notice must be provided to the City via Certified Mail in the event of cancellation.
  - g. The minimum limits of coverage shall be \$1,000,000 per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" type policy. The City must be listed as an Additional Insured under the Policy. Sixty (60) days written notice must be provided to the City via Certified Mail in the event of cancellation.



- h. In the event that sub-contractors used by the Contractor do not have insurance, or do not meet the insurance limits, Contractor shall indemnify and hold harmless the City for any claim in excess of the sub-consultants' insurance coverage, arising out of negligent acts, errors or omissions of the sub-contractors.
- i. Contractor shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the City.
- j. Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

7. Indemnification:

- a. The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.
- b. Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.
- c. The Contractor 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.
- d. The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the



term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.

- e. 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 Contractor under the indemnification agreement.
- f. Nothing contained herein 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.

**8. Non-Discrimination & Equal Opportunity Employment:**

During the performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. The Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that Sub-Contractors, if any, will be made aware of and will comply with this nondiscrimination clause.

**9. Independent Contractor:**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**10. Assignment and Subcontracting:**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

**11. Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**12. Venue:**

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

**13. Signatory Authority:**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**14. Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**15. No Construction Against Drafting Party:**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

**16. Notice:**

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person; sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services or by messenger service, addressed to the party for whom it is intended at the following addresses.





CITY

City Manager  
City of Tamarac  
7525 NW 88<sup>th</sup> Avenue  
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308

CONTRACTOR

Sun-Bergeron Solid Waste Services, JV  
2380 College Avenue  
Davie, Florida 33301  
Attn: Ron Bergeron

With a copy to:

Joe Goldstein, Esq.  
Shutts & Bowen, LLP  
200 East Broward Blvd.  
Suite 2100  
Fort Lauderdale, FL 33301

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its Principal duly authorized to execute same.

**CITY OF TAMARAC**

\_\_\_\_\_  
Beth Talabisco, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Michael C. Cernech, City Manager

\_\_\_\_\_  
Patricia A. Teufel, CMC  
Interim City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form and legal sufficiency:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
**Sun-Bergeron Solid Waste Services, JV**  
Company Name

\_\_\_\_\_  
Signature of Corporate Secretary

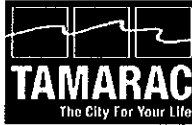
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Signature of Principal

\_\_\_\_\_  
Type/Print Name of Corporate Secy.

\_\_\_\_\_  
**Ron Bergeron** CHARLES Gosman  
Type/Print Name

(CORPORATE SEAL)

\_\_\_\_\_  
Date



## CORPORATE ACKNOWLEDGEMENT

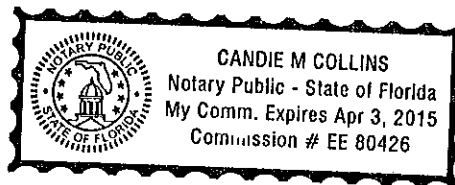
STATE OF FLORIDA :

COUNTY OF Broward :SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared ~~Bergeron~~ Charlie Gusmano, Principal of Sun-Bergeron Solid Waste Services, JV a Florida Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 13 day of June, 2013.

Candie M. Collins  
Signature of Notary Public  
State of Florida at Large

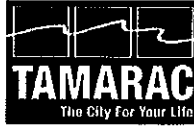


Print, Type or Stamp  
Name of Notary Public

☐ Personally known to me or  
☐ Produced Identification

Type of I.D. Produced

☐ DID take an oath, or  
☐ DID NOT take an oath.



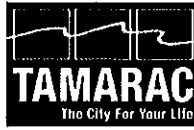
**EXHIBIT A**

**Agreement between  
Town of Southwest Ranches**

**And**

**Sun-Bergeron Solid Waste Services, JV**

**(See Next Page)**



**EXHIBIT B**

**Proposal by Sun-Bergeron Solid Waste Services, JV**

**To**

**City of Tamarac**

**(See Next Page)**

**Agreement  
Between  
Town of Southwest Ranches  
And  
SUN-BERGERON SOLID WASTE SERVICES, JV**

**FOR SOLID WASTE DISPOSAL  
AND RECYCLABLES PROCESSING SERVICES**



## TABLE OF CONTENTS

SECTION 1.	EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM .....	4
SECTION 2.	DEFINITIONS .....	4
SECTION 3.	CONTRACTOR'S DISPOSAL RESPONSIBILITIES .....	7
SECTION 4.	CONTRACTOR'S RECYCLABLES PROCESSING RESPONSIBILITIES.....	14
SECTION 5.	RATES AND BILLING FOR DISPOSAL SERVICE.....	17
SECTION 6.	REVENUE AND PAYMENT FOR RECYCLABLES.....	20
SECTION 7.	CHANGE IN LAW .....	22
SECTION 8.	LIQUIDATED DAMAGES .....	22
SECTION 9.	EMERGENCY SERVICE PROVISIONS .....	23
SECTION 10.	PERFORMANCE BOND .....	23
SECTION 11.	INSURANCE .....	24
SECTION 12.	INDEMNIFICATION OF TOWN .....	25
SECTION 13.	POINT OF CONTACT.....	27
SECTION 14.	NOTICE.....	27
SECTION 15.	TERMINATION OF CONTRACT .....	28
SECTION 16.	MODIFICATIONS TO THE CONTRACT.....	30
SECTION 17.	PERMITS AND LICENSES .....	30
SECTION 18.	INDEPENDENCE OF CONTRACT .....	30
SECTION 19.	FORCE MAJEURE .....	31
SECTION 20.	EMPLOYEE STATUS.....	31
SECTION 21.	EQUAL OPPORTUNITY EMPLOYMENT.....	31
SECTION 22.	MEDIATION.....	31
SECTION 23.	RIGHT TO REQUIRE PERFORMANCE.....	31
SECTION 24.	GOVERNING LAW .....	32
SECTION 25.	CONSENT TO JURISDICTION .....	32
SECTION 26.	LITIGATION .....	32
SECTION 27.	COMPLIANCE WITH LAWS.....	32
SECTION 28.	SEVERABILITY.....	32
SECTION 29.	ASSIGNMENT AND SUBLETTING.....	32

SECTION 30.	MODIFICATIONS .....	33
SECTION 31.	LEGAL REPRESENTATION.....	33
SECTION 32.	FUND APPROPRIATION.....	33
SECTION 33.	PUBLIC ENTITY CRIME .....	33
SECTION 34.	FINANCIAL INTEREST .....	33
SECTION 35.	ALL PRIOR AGREEMENTS SUPERSEDED.....	34
SECTION 36.	AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS .....	34
SECTION 37.	PIGGYBACK .....	34
SECTION 38.	PAYMENT DISPUTES .....	34
SECTION 39.	RECYCLING GUARANTY.....	35
SECTION 40.	MOST FAVORED PRICING AND MATERIAL TERMS .....	35
SECTION 41.	HEADINGS.....	35
SECTION 42.	EXHIBITS .....	35
EXHIBIT 1	DISPOSAL AND ANCILLARY SERVICES FEES	
EXHIBIT 2	PROGRAM RECYCLABLES REVENUE	



## **AGREEMENT FOR SOLID WASTE DISPOSAL AND RECYCLABLES PROCESSING SERVICES**

**Town of Southwest Ranches, Florida**

This Contract is made and entered into this 15<sup>th</sup> day of May, 2013, between the Town of Southwest Ranches, a municipal corporation of the State of Florida, Broward County, Florida, hereinafter referred to as "TOWN," and Sun-Bergeron Solid Waste Services, JV, authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, the TOWN and CONTRACTOR hereby agree as hereinafter set forth:

### **SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM**

- A. Effective and Commencement Dates The Effective Date of this Contract is the date this Contract is executed and signed by both the TOWN and CONTRACTOR. The Commencement Date is the date that services required pursuant to this Contract commence, or July 3, 2013.
- B. Initial Term The term of this Contract shall be for a five (5) year period beginning on the Commencement Date, July 3, 2013, and terminating July 2, 2018.
- C. Renewal Option At the option of the TOWN and with the concurrence of the CONTRACTOR, this Contract may be renewed for two (2) additional five (5) year terms under the same terms and conditions as the initial term, including amendments, subject to approval by the Town Council.

### **SECTION 2. DEFINITIONS**

For the purpose of this Solid Waste Disposal and Recyclables Processing Agreement, hereinafter referred to as "Contract," the definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the "Solid Waste Ordinance" as contained in the TOWN Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. Average Market Value (AMV) means a market index used to determine the revenue paid by the CONTRACTOR to the TOWN for Program Recyclables delivered to the Designated Recycling Facility based on monthly fluctuations in the commodity market as defined herein.
- B. Biohazardous or Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics (veterinary or otherwise), hospitals (veterinary or otherwise), and other facilities processing waste that may consist of, but are not limited to, human and animal

parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.

- C. Bulk Trash means those non-vegetative waste items that have not been containerized, bagged, or bundled, and that may require special handling and management including, but not limited to, furniture, white goods, refrigerators, ranges, pool heaters, water softeners, pianos, washers, dryers, water heaters, and other similar appliances, bicycles, electronics, mattresses, household goods, large boxes, barrels, crates, concrete, rubble, mixed roofing materials, rock, gravel and other earthen materials, equipment, wire and cable, materials resulting from home improvements, and any and all household goods that are customary to ordinary housekeeping operations of a residential service unit.
- D. Bulk Waste means the combination of Bulk Trash and Yard Trash collected by the Town's Contract Hauler.
- E. Commencement Date means the date services pursuant to this Contract commence, or July 3, 2013.
- F. Contract means this agreement, including all attachments, schedules, and amendments thereto, between the TOWN and the CONTRACTOR, governing the provision of services as defined herein.
- G. Contract Administrator means the person designated by the Town Administrator to administer and monitor the provisions of this Contract.
- H. Contract Year means twelve (12) consecutive months beginning on the Commencement Date and every twelve (12) months thereafter for the term of the Contract.
- I. CONTRACTOR means that person or entity that has obtained from the TOWN a Contract to provide the services set forth herein.
- J. Contractor-Generated Waste means Bulk Trash and/or Yard Trash generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, lawn or yard maintenance services, and nurseries.
- K. Designated Disposal Facility means the facility designated in this Contract for disposal of the TOWN'S Solid Waste.
- L. Designated Processing Facility means the facility designated in this Contract at which the CONTRACTOR will process Program Recyclables, which facility may be the same as or different than the Designated Recycling Facility.
- M. Designated Recycling Facility means the facility designated in this Contract at which the CONTRACTOR will receive delivery of Program Recyclables, whether such facility is a materials recovery facility, recovered materials processing facility, or a transfer station.
- N. Designated Receiving Facility means the facility at which Solid Waste is received by the CONTRACTOR.

- O. Drop-Off Bulk Waste means Bulk Waste generated from residential sources within the TOWN and accepted by the CONTRACTOR at a drop-off location as specified in this Contract. For the purposes of this Contract, Drop-Off Bulk Waste shall include residential Bulk Trash and Yard Trash, but not any putrescible waste, commercially generated waste, Contractor-Generated Waste, or Unacceptable Waste, with the exception of tires.
- P. Effective Date means the date this Contract is executed by both the TOWN and CONTRACTOR.
- Q. Electronic Waste or E-Waste means end-of-life or discarded electronic devices or component parts. For the purposes of this Contract, E-Waste includes computers, monitors, laptops, mice, printers, televisions, DVD, Blue Ray, CD or VCR players, copiers, fax machines, cell phones, chargers, rechargeable batteries, scanners, keyboards, stereos, speakers, small appliances, and auto/boat batteries from residential sources, as well as other items mutually agreed upon by the TOWN and CONTRACTOR.
- R. Hazardous Waste means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the State of Florida Administrative Code, or by any current or future Federal, State, or local law.
- S. Holiday means a designated holiday on which the CONTRACTOR shall not be required to provide service. For the purposes of this Contract, Holiday shall only mean Christmas Day unless additional Holidays are approved by the Contract Administrator.
- T. Household Hazardous Waste or HHW means a waste produced in the home containing hazardous substances that may pose a threat to the environment, wildlife, and/or human health. For the purposes of this Contract, HHW includes aerosol products, ammonia, ammunition, anti-freeze, auto fluids, auto batteries, boat batteries, boat fluids, charcoal starter, compact fluorescent bulbs (CFLs), drain cleaner, fertilizers, fire extinguishers, fireworks, flares, fluorescent tubes, gasoline, herbicides, household cleaners, insect killer, kerosene, lawn chemicals, lighter fluid, mercury thermometers, motor oil, nail polish remover, paint, pesticides, photo chemicals, pool chemicals, propane tanks, rechargeable batteries, rust remover, solvents, spot remover, tires, turpentine, weed killer, wood stains, and wood stripper from residential sources, as well as other items mutually agreed upon by the TOWN and CONTRACTOR.
- U. Program Recyclables means Recyclable Materials collected by or on behalf of the TOWN and over which the TOWN has control, including newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, polycoated cartons, and other materials added by mutual agreement of the TOWN and CONTRACTOR.
- V. Recovered Materials means Recyclable Materials which have been processed to market specifications.
- W. Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

- X. Rejects means materials, other than Residue, that cannot be recycled and that cannot be processed into Recovered Materials.
- Y. Residue means the portion of the Recyclable Material stream accepted by the CONTRACTOR that is not converted to Recovered Materials due to breakage and/or transportation or processing inefficiencies.
- Z. Single Stream means a recycling process that allows for Recyclable Materials to be collected commingled with no sorting required by residents, businesses, or haulers.
- AA. Solid Waste means rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, commercial, agricultural, or governmental operations. For the purposes of this Contract, Solid Waste does not include Recyclable Materials, Unacceptable Waste, residential Bulk Waste, or Solid Waste not controlled by the TOWN.
- BB. Ton means a unit of weight equal to 2,000 pounds, also referred to as a short ton.
- CC. TOWN means the Town of Southwest Ranches, Florida.
- DD. Town's Contract Hauler means the firm that is presently, or that may in the future, contract with the TOWN to collect and transport Solid Waste and Program Recyclables.
- EE. Town Council or Council means the governing body of the Town of Southwest Ranches, Florida.
- FF. Unacceptable Waste means Biohazardous or Biomedical Waste, Hazardous Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, and those wastes under the control of the Nuclear Regulatory Council.
- GG. Work Day means any day, Monday through Saturday, which is not a Holiday as set forth in this Contract.
- HH. Yard Trash means any vegetative matter resulting from normal yard and landscaping maintenance. Yard Trash must be generated from residential sources. Yard Trash includes Christmas trees, but does not include Contractor-Generated Waste.

### **SECTION 3. CONTRACTOR'S DISPOSAL RESPONSIBILITIES**

#### **A. Designated Facilities**

- (1) The following facility is the Designated Receiving Facility at which Solid Waste will be received by the CONTRACTOR pursuant to this Contract: Sun 12, 2380 College Avenue, Davie, FL 33319, or such other facility that may be approved in writing by the Town.
- (2) The following facility is the Designated Disposal Facility at which Solid Waste will be disposed pursuant to this Contract: JED Solid Waste Management Facility, 1501 Omni Way, Saint Cloud, FL 34773, or such other facility that may be approved in writing by the Town.

- (3) The Designated Receiving Facility and Designated Disposal Facility may be changed only with prior written approval by the Contract Administrator. The CONTRACTOR shall not take the TOWN'S Solid Waste to any other disposal facility than the Designated Disposal Facility unless prior written approval is given by the Contract Administrator.
- (4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Receiving Facility and Designated Disposal Facility.
- (5) The CONTRACTOR shall ensure that the Designated Receiving Facility and Designated Disposal Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (6) The TOWN shall have the right, during the CONTRACTOR'S hours of operation, to inspect both the operating and maintenance practices of the Designated Receiving Facility and Designated Disposal Facility. Operating practices shall include, but not be limited to, the receipt, loading, storage, transport, and disposal of Solid Waste. The CONTRACTOR shall reasonably accommodate the TOWN'S inspection rights described herein, provided it does not create a safety hazard.

**B. Solid Waste Acceptance and Disposal**

- (1) Beginning on the Commencement Date, the TOWN shall direct the Town's Contract Hauler to deliver all Solid Waste over which the TOWN has control to the Designated Receiving Facility during the scheduled receiving hours specified herein. The TOWN makes no assurances or guarantees regarding the quantity of Solid Waste that will be delivered to the Designated Receiving Facility.
- (2) Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries of Solid Waste at the Designated Receiving Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Receiving Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (3) The Designated Receiving Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the Designated Facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the TOWN with access to its records to verify vehicle turnaround time within twenty-four (24) hours' notice.
- (4) The Designated Receiving Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Solid Waste delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.

- (5) The CONTRACTOR shall weigh all trucks transporting Solid Waste, by or on behalf of the TOWN, that enter the Designated Receiving Facility, record such weights separate from all other materials, and generate reports of incoming Solid Waste as required herein or requested by the TOWN. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.
- (6) Upon acceptance of Solid Waste at the Designated Receiving Facility, the CONTRACTOR shall assume ownership of such Solid Waste. The CONTRACTOR shall bear all costs associated with transporting and disposing of the TOWN'S Solid Waste, including transport to the Designated Disposal Facility, if applicable.
- (7) If Unacceptable Waste is found within a load of Solid Waste delivered by the TOWN or its agents to the Designated Receiving Facility, the CONTRACTOR shall immediately notify the Contract Administrator and note the incident by taking a photograph of the Unacceptable Waste and the truck, including the truck number, and the truck driver's information that delivered the Unacceptable Waste. The CONTRACTOR is responsible for properly isolating, containerizing, and disposing of such Unacceptable Waste in accordance with all applicable laws. The cost of managing and disposing of such Unacceptable Waste shall be borne by the TOWN, provided that the CONTRACTOR has adequately documented that such waste was delivered by or on behalf of the TOWN.
- (8) In the event the CONTRACTOR fails, refuses, or is unable to accept Solid Waste on the Commencement Date or thereafter during the term of the Contract, the CONTRACTOR will be liable for all hauling, processing, transportation, disposal charges, and any other related costs in excess of the Disposal Fee paid to the CONTRACTOR that may be incurred by the TOWN with respect to the disposal of such Solid Waste.

C. Ancillary Services

- (1) The CONTRACTOR shall provide four (4) HHW and E-Waste collection events per year (one per calendar year quarter), hereinafter referred to as "HHW Collection Events." Such events shall be conducted within the TOWN limits at a location to be provided by the TOWN and on dates to be approved by the Contract Administrator. Such HHW Collection Event shall be limited to TOWN residents who show official proof of residency.
  - (a) Each HHW Collection Event shall occur on a Saturday and shall last at least six (6) hours in duration or until all residents that have arrived at the location during those hours have been serviced. CONTRACTOR shall arrive at a minimum of one and one-half (1.5) hours prior to the event start time for setup and a pre-event safety meeting.
  - (b) The CONTRACTOR shall be responsible for providing all staff, equipment, and resources needed for the collection, quantifying, packaging and removal of HHW and E-Waste received at each HHW Collection Event.

- (c) The CONTRACTOR shall accept, quantify, log, transfer, recycle, reuse and/or dispose of HHW and E-Waste delivered by TOWN residents to the HHW Collection Event.
- (d) The CONTRACTOR shall provide traffic control, adequate ingress and egress, and adequate staff to prevent long waits for TOWN residents.
- (e) The CONTRACTOR shall ensure that HHW and E-Waste is accepted from TOWN residents only, via valid identification or other means. No commercially generated waste or Contractor-Generated Waste shall be accepted.
- (f) The CONTRACTOR is solely responsible for complying with all local, State, and Federal regulations regarding packaging, recycling, demanufacturing, and transporting E-Waste and HHW, including any and all requirements mandated by federally permitted facilities.
- (g) Upon acceptance of HHW and E-Waste at the HHW Collection Event, the CONTRACTOR shall bear all costs associated with processing, transporting, recycling, reusing, and/or disposing of such materials.
- (h) For invoicing purposes, the CONTRACTOR shall quantify and weigh all materials received during the Drop-Off HHW Collection Event. If any weighing is to be conducted at the HHW Collection Event site, the CONTRACTOR shall utilize a portable scale capable of accurately weighing from one (1) pound to two hundred fifty (250) pounds. The CONTRACTOR is responsible for maintenance, servicing, and certification of scales annually. Copy of scale certifications shall be provided to the TOWN within twenty-four (24) hours after calibration. If weighing is to be done offsite, the facility shall be equipped with a similarly certified portable scale or an adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming HHW delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (i) At least sixty (60) days prior to the Commencement Date, the CONTRACTOR shall provide the TOWN with an Operations Plan detailing the following:
  - Number of staff personnel and minimum level of training of such staff. Drop-Off HHW Site Manager shall receive training in accordance with OSHA 29 CFR §1910.120.
  - List of onsite equipment.
  - Set up of site, including traffic control, ingress and egress, and restricted areas.
  - Methodology detailing how materials will be received and logged and a sample log sheet.
  - Methodology detailing how materials will be managed, collated, containerized and/or palletized, tracked, weighed, and/or transported from the HHW Collection Event site to final disposal/recycling facilities.

- Site safety, chemical containment, and spill containment plans.
- Methodology detailing how the CONTRACTOR will ensure accurate invoicing to the TOWN. Methodology shall detail where and how materials will be weighed for invoicing purposes and how the weight of pallets, drums, and other packaging materials will be deducted from gross weight.
- Sample invoice for TOWN review.

The Operations Plan is subject to approval by Contract Administrator.

- (j) Within thirty (30) days of the Commencement Date, the CONTRACTOR shall provide documentation of end markets for all HHW and E-Waste. Documentation may be in the form of (1) letter of agreements/contracts on subcontractor letterhead; (2) copies of agreements/contracts indicating scope of agreement, dates and signatures; or (3) sworn affidavit from CONTRACTOR on contractor letterhead. Such documentation shall specify the materials involved, time period for which agreement or affidavit is valid, and a general description of the material disposition (precious metal recovery, sale to repair facility, resale to public, secondary lead smelter, etc.). The CONTRACTOR shall keep this information current throughout the term of the Contract. Should the environmental or regulatory compliance record of an end market warrant, the TOWN reserves the right to require the CONTRACTOR to change end markets.
- (2) The CONTRACTOR shall provide four (4) drop-off collection events per year (one per calendar year quarter) for Drop-Off Bulk Waste, hereinafter referred to as "Drop-Off Collection Events." Such events shall be conducted within the TOWN limits at a location to be provided by the TOWN and on dates to be approved by the Contract Administrator. Such Drop-Off Collection Events shall be limited to TOWN residents who show official proof of residency.
    - (a) Each Drop-Off Collection Event shall occur on a Saturday and shall last at least six (6) hours in duration or until all residents that have arrived at the location during those hours have been serviced. Such events may be scheduled in conjunction with or separate from the HHW Collection Events, as approved by the Contract Administrator.
    - (b) The CONTRACTOR shall be responsible for providing all staff, equipment, and resources needed to conduct each Drop-Off Collection Event.
    - (c) The CONTRACTOR shall accept, transfer, recycle, reuse and/or dispose of Drop-Off Bulk Waste delivered by TOWN residents to the Drop-Off Collection Events.
    - (d) The CONTRACTOR shall ensure that Drop-off Bulk Waste is accepted from TOWN residents only, via valid identification or other means. No commercially generated waste or Contractor-Generated Waste shall be accepted.
    - (e) Upon acceptance of Drop-Off Bulk Waste at the Drop-Off Collection Event, the CONTRACTOR shall bear all costs associated with processing, transporting, recycling, reusing, and/or disposing of such materials.



- (f) The CONTRACTOR shall weigh all Drop-Off Bulk Waste materials transferred from Drop-Off Collection Site upon entering the final disposal/recycling facility and record the net weight of the materials by subtracting the weight of the empty vehicle upon exit of the facility. No vehicle tare weights shall be used for Drop-Off Bulk Waste deliveries. The final disposal facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Drop-Off Bulk Waste delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (g) At least sixty (60) days prior to the Commencement Date, the CONTRACTOR shall provide the TOWN with an Operations Plan detailing the following:
- Number of staff personnel to be on site during operating hours.
  - Set up of site, including traffic control and restricted areas.
  - List of onsite equipment.
  - Logistics of how materials will be received, quantified and logged and a sample log sheet.
  - Site Safety Plan.
  - Methodology detailing how materials will be received, managed, containerized, tracked, weighed, and/or transported from the Drop-Off Collection Event site to final disposal/recycling facilities.
  - Details regarding any processing of Drop-Off Bulk Waste that will take place at Drop-Off Collection Event Site or elsewhere.
  - Methodology detailing how the CONTRACTOR will ensure accurate invoicing to the TOWN. Methodology shall detail where and how materials will be weighed for invoicing purposes.
  - Sample Invoice.

Operations Plan is subject to approval by Contract Administrator.

- (h) Within thirty (30) days of the Commencement Date, the CONTRACTOR shall provide the Contract Administrator with the name of the facility or facilities at which Drop-Off Bulk Waste will be recycled or disposed, including the facility location, contact person, phone number, and email address. The CONTRACTOR shall keep this list current throughout the term of the Contract.

#### D. Record Keeping

- (1) The CONTRACTOR shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.

- (2) The CONTRACTOR shall maintain records of the amounts of the TOWN'S Solid Waste received at the Designated Receiving Facility. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR. Records shall distinguish between residential Solid Waste and commercial Solid Waste, and shall provide delivery date and time, vehicle number, and net weight.
- (3) The CONTRACTOR shall maintain such records in accordance with generally accepted management principles and practices. The TOWN shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and CONTRACTOR acknowledges that such laws have possible application and agrees to comply with all such laws.
- (4) The CONTRACTOR shall complete and maintain log sheets, the format of which must be approved by the Contract Administrator, regarding the HHW and E-Waste received at each HHW Collection Event. At a minimum, the CONTRACTOR shall record the number and types (e.g., automobile, pickup truck, trailer, etc.) of vehicles delivering materials, the name and the address of the resident dropping off the HHW and E-Waste, the types of HHW and E-Waste delivered by each resident, and the total amount of HHW and E-Waste collected at each event by type. The log sheets must be verified and signed by the CONTRACTOR and the TOWN and each provided with a copy before any HHW and E-Waste are transported from the collection site.
- (5) The CONTRACTOR shall complete and maintain log sheets regarding the Drop-Off Bulk Waste received at each Drop-Off Collection Event. At a minimum, the CONTRACTOR shall record the number and types (e.g., automobile, pickup truck, trailer, etc.) of vehicles delivering Bulk Waste, the name and the address of the resident dropping off the Drop-Off Bulk Waste, the types and estimated quantities, in cubic yards, of Bulk Waste delivered by each resident, and the total amount (in cubic yards) of Bulk Waste collected at each event.
- (6) The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Contract in accordance with the records retention requirements set forth in Florida Law.

#### E. Reporting

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of residential Solid Waste and commercial Solid Waste received at the Designated Receiving Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity. If applicable, the report shall include any tonnage diverted from disposal by the CONTRACTOR.
- (2) Within thirty (30) calendar days after each HHW Collection Event and Drop-Off Collection Event, the CONTRACTOR shall submit a report electronically to the Contract

Administrator, in a format approved by the Contract Administrator. The report shall provide the information collected at the HHW Collection Event and Drop-Off Collection Event.

- (3) Within ninety (90) days after each HHW Collection Event and Drop-Off Collection Event, the CONTRACTOR shall provide documentation of disposal and/or recycling, indicating the recycling/demanufacturing/disposal location and certifying that all HHW, E-Waste, and Bulk Waste was handled in accordance with State, Federal, and international rules as they apply.
- (4) Within thirty (30) days after the end of each Contract Year, the CONTRACTOR shall provide the Contract Administrator with a report summarizing the total Tons of residential Solid Waste and commercial Solid Waste delivered to the Designated Receiving Facility during the Contract Year and the net tonnage diverted from disposal (if applicable).
- (5) At least fifteen (15) days prior to the end of each Contract Year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance and performance bond.

#### **SECTION 4. CONTRACTOR'S RECYCLABLES PROCESSING RESPONSIBILITIES**

##### **A. Designated Facilities**

- (1) The following facility is the Designated Recycling Facility at which Program Recyclables will be received by the CONTRACTOR pursuant to this Contract: Sun 2, 2281 NW 16<sup>th</sup> Street, Pompano Beach, FL, or such other facility that may be approved in writing by the Town.
- (2) The following facility is the Designated Processing Facility at which Program Recyclables will be processed pursuant to this Contract: Sun 2, 2281 NW 16<sup>th</sup> Street, Pompano Beach, FL, or such other facility that may be approved in writing by the Town.
- (3) The Designated Recycling Facility and Designated Processing Facility may be changed only with prior written approval by the Contract Administrator.
- (4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility.
- (5) The CONTRACTOR shall ensure that the Designated Recycling Facility and Designated Processing Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (6) The TOWN shall have the right, during the CONTRACTOR'S hours of operation, to inspect both the operating and maintenance practices of the Designated Recycling Facility and Designated Processing Facility. Operating practices shall include, but not be

limited to, the receipt, separation, processing, loading, storage, and transport of Recyclable Materials and Recovered Materials. The CONTRACTOR shall reasonably accommodate the TOWN'S inspection rights described herein, provided it does not create a safety hazard.

B. Materials Acceptance

- (1) Beginning on the Commencement Date, the TOWN shall direct the TOWN'S Contract Hauler to deliver all Program Recyclables to the Designated Recycling Facility during the scheduled receiving hours specified herein. Program Recyclables will be delivered Single Stream. The TOWN makes no assurances or guarantees regarding the quantity of Program Recyclables that will be delivered to the Designated Recycling Facility.
- (2) Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries of Program Recyclables at the Designated Recycling Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Recycling Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (3) Program Recyclables are as defined in Section 2.U. The TOWN reserves the right to designate or remove other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.
- (4) The Designated Recycling Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the TOWN with access to its records to verify vehicle turnaround time within twenty-four (24) hours notice.
- (5) The Designated Recycling Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Program Recyclables delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (6) The CONTRACTOR shall weigh all trucks transporting Program Recyclables that enter the Designated Recycling Facility, record such weights separate from all other materials, and generate reports of incoming Program Recyclables as required herein or requested by the TOWN. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.
- (7) If Hazardous Waste is found within a load of Program Recyclables delivered by the TOWN or its agents to the Designated Receiving Facility, the CONTRACTOR shall immediately notify the Contract Administrator and note the incident by taking a

photograph of the Hazardous Waste and the truck, including the truck number and the truck driver's information, that delivered the waste. The CONTRACTOR is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by the TOWN, provided that the CONTRACTOR has adequately documented that such waste was delivered by or on behalf of the TOWN.

- (8) In the event the CONTRACTOR fails, refuses, or is unable to accept Program Recyclables on the Commencement Date or thereafter during the term of the Contract, the CONTRACTOR will be liable for all hauling, processing, transportation, disposal charges and any other related costs, in excess of payments that would have been made under this Contract, which may be incurred by the TOWN with respect to recycling and marketing such materials.

C. Transport, Processing, Marketing, and Disposal

- (1) Upon acceptance of Program Recyclables at the Designated Recycling Facility, the CONTRACTOR shall bear all costs associated with processing or transporting Program Recyclables and marketing and transporting Recovered Materials. The CONTRACTOR is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, resulting from the processing of Program Recyclables.
- (2) Unless the CONTRACTOR has prior written permission from the TOWN, the CONTRACTOR shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. The CONTRACTOR shall not knowingly, or without reasonable assumption, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.

D. Record Keeping

- (1) The CONTRACTOR shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (2) The CONTRACTOR shall maintain records of the amounts of Program Recyclables received at the Designated Recycling Facility. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR.
- (3) The CONTRACTOR shall maintain such records in accordance with generally accepted management principles and practices. The TOWN shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and CONTRACTOR acknowledges that such laws have possible application and agrees to comply with all such laws.

- (4) The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Contract in accordance with the records retention requirements set forth in Florida Law.

**E. Reporting**

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Recycling Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity.
- (2) Within thirty (30) days of the end of each Contract Year, the CONTRACTOR shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclables delivered to the Designated Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the CONTRACTOR shall submit a copy of the annual report submitted to FDEP summarizing Recyclable Materials deliveries by type, quantity, and source.
- (3) At least fifteen (15) days prior to the end of each Contract Year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance and performance bond.

**F. Public Education and Information**

- (1) The CONTRACTOR shall, at no cost to the TOWN, provide an educational presentation at up to two (2) events per Contract Year as requested by the TOWN.
- (2) The CONTRACTOR shall, at no cost to the TOWN, provide tours of the Designated MRF upon at least seven (7) calendar days notice by the TOWN. The CONTRACTOR shall provide personnel (bilingual upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the TOWN and the CONTRACTOR prior to conducting any tours.

**SECTION 5. RATES AND BILLING FOR DISPOSAL SERVICE**

**A. Disposal Fee**

- (1) The per-Ton fee for receipt, management, and disposal of the TOWN's residential and commercial Solid Waste, and providing all related services as specified herein, is as specified in Exhibit 1 of this Contract. This fee is hereinafter referred to as the "Disposal Fee."

- (2) The TOWN shall be responsible for payment of the Disposal Fee for residential Solid Waste, as specified in Section 5.E. The CONTRACTOR shall collect payment for disposal of commercial Solid Waste from the Town's Contract Hauler.
  - (3) The Disposal Fee shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Disposal Fee shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual Disposal Fee adjustment exceed three percent (3%) of the Disposal Fee paid by the TOWN during the previous Contract Year.
- B. Contract Preparation and Administration Expenses. The CONTRACTOR understands and agrees that the cost of the bid process is a part of the cost of providing disposal service and thus a responsibility of the CONTRACTOR, and even though such costs in the amount of thirty thousand dollars (\$30,000) were initially expended by the TOWN, the expenditure was for the benefit of the CONTRACTOR. Accordingly, CONTRACTOR agrees that any and all monies due CONTRACTOR for the provision of services under this Contract, up to an amount of thirty thousand dollars (\$30,000), will be credited against the CONTRACTOR'S monthly invoices, as follows, as reimbursement for these expenditures:
- (1) Ten thousand dollars (\$10,000) will be credited against payment to the CONTRACTOR for the first month of service.
  - (2) The remaining twenty thousand dollars (\$20,000) will be credited against the CONTRACTOR'S monthly invoices at two thousand dollars (\$2,000) per month for ten (10) months, beginning the second month of the Contract term.
- C. HHW Collection Event Fees
- (1) The per-event fee for providing all staff, equipment, and resources needed for the HHW Collection Event and the per-item disposal/recycling fees for each type of HHW and E-Waste are as specified in Exhibit 1 of this Contract. These fees are hereinafter referred to as the "HHW Collection Event Fees."
  - (2) The TOWN shall be responsible for payment of the HHW Collection Event Fees, as specified in Section 5.E.
  - (3) The HHW Collection Event Fees shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the HHW Collection Event Fees shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In

no event shall the annual HHW Collection Event Fees adjustment exceed three percent (3%) of the HHW Collection Event Fees paid by the TOWN during the previous Contract Year.

D. Drop-Off Collection Event Fees

- (1) The per-event fee for providing all staff, equipment, and resources needed for the Drop-Off Collection Event and the per-Ton disposal fee for Drop-Off Bulk Wastes are as specified in Exhibit 1 of this Contract. These fees are hereinafter referred to as the "Drop-Off Collection Event Fees."
- (2) The TOWN shall be responsible for payment of the Drop-Off Collection Event Fees, as specified in Section 5.E.
- (3) The Drop-Off Collection Event Fees shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Drop-Off Collection Event Fees shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual Drop-Off Collection Event Fees adjustment exceed three percent (3%) of the Drop-Off Collection Event Fees paid by the TOWN during the previous Contract Year.

E. Invoicing and Payment

- (1) The CONTRACTOR shall submit a monthly invoice, in a form acceptable to the TOWN, detailing the total fees due to the CONTRACTOR for disposal of residential Solid Waste during the previous month. The invoice shall be sent to the following address:  
  
Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330
- (2) Following each HHW Collection Event, the CONTRACTOR shall submit an itemized invoice, which shall provide the following information:
  - (a) Date and location of HHW Collection Event.
  - (b) Quantities, in pounds, by category, of waste collected.
  - (c) Cost per pound of waste collected by category.
  - (d) Total amount due for the HHW Collection Event.



- (3) Following each Drop-Off Collection Event, the CONTRACTOR shall submit an itemized invoice, which shall provide the following information:
  - (a) Date and location of Drop-Off Collection Event.
  - (b) Quantities, in Tons, of Bulk Waste collected.
  - (c) Cost per Ton of Bulk Waste collected.
  - (d) Total amount due for the Drop-Off Collection Event.
- (4) The TOWN shall remit payment within thirty (30) days of invoice receipt.

## **SECTION 6. REVENUE AND PAYMENT FOR RECYCLABLES**

### **A. Program Recyclables Revenue**

- (1) The CONTRACTOR shall pay the TOWN monthly for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in Exhibit 2:
  - (a) Each month, the CONTRACTOR shall calculate the Average Market Value (AMV) of the Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in Exhibit 2. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
  - (b) A Contractor's Fee of fifty dollars (\$50.00) per Ton shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A.(2).
  - (c) The CONTRACTOR shall pay the TOWN a percentage, as provided in Exhibit 2, of the remaining amount, for each Ton of inbound Program Recyclables delivered to the Designated MRF during that month.
  - (d) If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), the CONTRACTOR shall make no payment to the TOWN and the TOWN shall make no payment to the CONTRACTOR. At no time shall the TOWN make payment to the CONTRACTOR for accepting, processing, or marketing Program Recyclables, regardless of the AMV.
- (2) The Contractor's Fee of fifty dollars (\$50) shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price

Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. If the CPI is discontinued or substantially altered, the TOWN may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

- (3) The TOWN or CONTRACTOR may conduct a composition study of Program Recyclables delivered to the Designated Recycling Facility. The party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the TOWN. The TOWN reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the TOWN, which shall not be unreasonably withheld. If approved by the TOWN, adjustments to the composition percentages provided in Exhibit 2 shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.
- (4) The CONTRACTOR acknowledges and accepts that the formula outlined in Section 6.A shall be used for calculating revenue throughout the term of the Contract. It is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the CONTRACTOR differs from the market index or the Contractor's Fee does not accurately reflect the CONTRACTOR'S cost for accepting, processing, and marketing Program Recyclables, the CONTRACTOR shall have taken such items into consideration when bidding the percentage of the AMV less the Contractor's Fee that it will pay to the TOWN. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the CONTRACTOR.

**B. Invoicing and Payment**

- (1) No later than the fifteenth (15<sup>th</sup>) day of each month, the CONTRACTOR shall submit a monthly report, in a form acceptable to the TOWN, detailing the total revenue due to the TOWN for the Program Recyclables delivered to the Designated Recycling Facility during the previous month. The report shall be sent to the following address:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

- (2) The CONTRACTOR shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due. Payment shall be remitted to the following:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

## **SECTION 7. CHANGE IN LAW**

The CONTRACTOR may petition the TOWN for an additional rate adjustment resulting from a change in law. The CONTRACTOR'S request shall contain substantial proof and justification to support the need for the rate adjustment. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the TOWN, the Town Administrator shall make a determination regarding the fairness of the request, and shall make a recommendation to the Town Council. The Town Council shall consider the request at a regular meeting. If the Town Council approves the request, adjusted rates shall become effective upon the Town Council's approval.

## **SECTION 8. LIQUIDATED DAMAGES**

- A. Assessment of Liquidated Damages The Contract Administrator may assess liquidated damages pursuant to this Section on a monthly basis in connection with this Contract and shall, at the end of each month during the term of this Contract, notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, it may request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- B. Liquidated Damages for Disposal Service The TOWN may assess liquidated damages against the CONTRACTOR for failing to provide disposal and/or ancillary services in compliance with requirements of this Contract. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, liquidated damages, and not as a penalty, in the following amounts:
1. Failure to accept Solid Waste during scheduled receiving hours (Section 3.B.) \$500 per unaccepted load
  2. Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 3.B.) \$100 per day
  3. Failure to appear at HHW or Drop-Off Collection Events in a capacity satisfactory to accept and transfer materials received. (Section 3.C.) \$2,500 per instance
  4. Failure to submit timely records and reports (Section 3.E.) \$100 per calendar day late

- C. Liquidated Damages for Recyclables Processing Service. The TOWN may assess liquidated damages against the CONTRACTOR for failing to provide recyclables processing services in compliance with requirements of this Contract. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, liquidated damages, and not as a penalty, in the following amounts:

- |   |                             |
|---|-----------------------------|
| 1. Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.B.)                                   | \$500 per unaccepted load   |
| 2. Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 4.B.)       | \$100 per day               |
| 3. Disposing of Recyclable Materials or Recovered Materials without prior approval of the Executive Director (Section 4.C.) | \$1,000 per occurrence      |
| 4. Failure to submit timely records and reports (Section 4.E.)  | \$100 per calendar day late |
| 5. Failure to make timely payment to the TOWN (Section 6.B.)  | \$100 per calendar day late |

## **SECTION 9. EMERGENCY SERVICE PROVISIONS**

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular service. However, CONTRACTOR shall make its best effort to resume regular service as soon as possible, and no later than resumption of collection service by the Town's Contract Hauler. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal service can be resumed.

## **SECTION 10. PERFORMANCE BOND**

- A. Prior to commencing services, the CONTRACTOR shall furnish to the TOWN, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in the amount below.
- (1) The Performance Bond for disposal services shall be in the amount of one hundred twenty-five thousand dollars (\$125,000).
  - (2) The Performance Bond for recyclables processing services shall be in the amount of ten thousand dollars (\$10,000).
- B. The Performance Bond shall be executed by a surety company licensed to do business in the State of Florida; having an "A" or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the TOWN.

- 11.2 TOWN as additional insured. The TOWN shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation. All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to TOWN or any other additional insured with respect to claims covered under the policy and (b) Contractor's Insurance applies separately to each insured against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Self-insurance by CONTRACTOR shall not be acceptable as providing any of the required insurance coverages required in this Agreement.
- 11.3 Insurance company standards. Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with a minimum rating from A.M. Best Company of A- Excellent: FSC VII.
- 11.4 Notice of cancellation. Contractor agrees to furnish TOWN with at least 30 days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, CONTRACTOR shall furnish, at least ten days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. CONTRACTOR shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.
- 11.5 Minimum level of coverage. To ensure an adequate level of outstanding insurance coverage for claims that arise from CONTRACTOR'S performance under this Agreement, CONTRACTOR shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of twenty-five million dollars (\$25,000,000) after deducting the amount of any

claims filed or made against any policy required under this Agreement during the Term of this Agreement and the five-year period following the term of this Agreement.

- 11.6 Premium payment responsibility. CONTRACTOR shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject. CONTRACTOR shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement, agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- 11.7 If Contractor's Insurance policy is a "claims-made" policy, then CONTRACTOR shall maintain such Insurance Coverage for a period of five (5) years after the expiration or termination of the agreement or any extensions or renewals of the agreement. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- 11.8 If any of Contractor's Insurance policies includes a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this article.
- 11.9 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 11.10 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 11.11 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which TOWN is named as an additional named insured shall not apply to TOWN in any respect. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN'S actual notice of such event.
- 11.12 Notwithstanding any other provisions of this Agreement, CONTRACTOR'S obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

## **SECTION 12. INDEMNIFICATION OF TOWN**

- A. CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents, and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or

indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the breach of this Contract, violation of applicable law, and the negligent acts or omissions of the CONTRACTOR in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property; provided, however, that nothing herein shall be construed to require the CONTRACTOR to indemnify the TOWN or other indemnitee set forth above, for the sole negligence, or willful, wanton or intentional misconduct of the TOWN or other indemnitee set forth above.

- B. CONTRACTOR further agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against TOWN, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent rights or for the infringement of any and all copyrights or patent claimed by any person, firm or corporation.
- C. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the TOWN, to defend any action against the TOWN that falls within the scope of this indemnity as set forth above in Subsections A and B, or the TOWN, at the TOWN'S option, may elect not to tender such defense and may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notice from the TOWN, fails to make any payment due under this Contract to the TOWN or fails to perform any obligation required by this Contract, CONTRACTOR shall pay any reasonable attorneys' fees and costs incurred by the TOWN in securing any such payment from CONTRACTOR, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the TOWN that such amount is due, be made by CONTRACTOR prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse the TOWN for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the TOWN that such payment is past due at least twenty (20) days .
- D. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Contract consists of the promises, payments, covenants, rights, and responsibilities contained in this Contract.
- E. The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 23.
- F. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the TOWN in accordance with this Contract.

### **SECTION 13. POINT OF CONTACT**

The day-to-day dealings between the CONTRACTOR and the TOWN shall be between the CONTRACTOR and the Town Administrator or designee.

### **SECTION 14. NOTICE**

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

Andrew Berns, Town Administrator  
Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, Florida 33330

With a copy to:

Keith M. Poliakoff, J.D., Town Attorney  
Law Offices of Becker and Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312

As to the CONTRACTOR:

Ron Bergeron, Sr., Manager  
Sun-Bergeron Solid Waste Services, JV  
2380 College Avenue  
Davie, FL 33317

With a copy to:

Joe Goldstein, Esq.  
Shutts & Bowen, LLP  
200 East Broward Boulevard  
Suite 2100  
Fort Lauderdale, FL 33301

Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Facsimile transmission is acceptable notice, effective when received; however, facsimile transmissions received (i.e., printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.



**SECTION 15. TERMINATION OF CONTRACT**

A. Termination for Cause. The TOWN may cancel this Contract, except as otherwise provided below in this Section, by giving the CONTRACTOR thirty (30) days advance written notice, to be served as provided in Section 26, upon the happening of any one of the following events:

- (1) The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any State thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- (2) By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any State thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
- (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) days; or
- (4) The CONTRACTOR has defaulted by failing or refusing to pay in a timely manner the administrative charges or other monies due the TOWN and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
- (5) The CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
- (6) In the event that the monies due the TOWN under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the Town Attorney; or
- (7) The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant to this Contract or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so,

the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate, (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide service for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4<sup>th</sup>) Work Day in order to provide interim Contract service until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN.

- B. Habitual Violations Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Section, in the event that the CONTRACTOR'S record of performance shows that the CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the CONTRACTOR, in the opinion of the TOWN, and regardless of whether the CONTRACTOR has corrected each individual condition of default, the CONTRACTOR shall be deemed a "habitual violator," shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively and shall constitute a condition of irredeemable default. The TOWN shall thereupon issue the CONTRACTOR a final warning citing the circumstances therefore, and any single default by the CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the TOWN may terminate this Contract upon giving of written final notice to the CONTRACTOR, such cancellation to be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice the CONTRACTOR shall cease any further performance under this Contract.
- C. Termination Without Cause In addition to and notwithstanding any other provisions of the Agreement, this Agreement may be terminated by the TOWN for convenience upon providing the CONTRACTOR with six (6) months written notice.
- D. Effective Date of Termination. In the event of the aforesaid events specified in subsections A, B, and C above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR and upon said date this Contract shall be deemed immediately terminated and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The CONTRACTOR, for failure to perform, shall reimburse the TOWN all direct and indirect costs of providing interim service.

**SECTION 16. MODIFICATIONS TO THE CONTRACT**

The TOWN shall have the power to make changes in this Contract as the result of changes in law, TOWN Code, or both to impose new rules and regulations on the CONTRACTOR under this Contract relative to the scope and methods of providing the service specified herein as shall from time-to-time be necessary and desirable for the public welfare. The TOWN shall give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. If a change is required as a result of an amendment to the TOWN's Code, upon receipt of the proposed change, CONTRACTOR shall have ten (10) business days to either accept the change or to terminate this Agreement by providing the TOWN with ninety (90) days written notice of termination. Failure to provide the TOWN with written notice of termination shall constitute acceptance of the proposed change. The scope and method of providing service as referenced herein shall also be liberally construed to include, but they are not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the CONTRACTOR.

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. The CONTRACTOR agrees that the terms and provisions of any TOWN Code of the TOWN related to Solid Waste services and regulations, as it now exists or as it may be amended in the future as a result of any changes in the law, shall apply to all of the provisions of this Contract. In the event any future change in the TOWN Code materially alters the obligations of the CONTRACTOR, then the fee established in the Exhibits to this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The TOWN and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Contract under this Section. The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

**SECTION 17. PERMITS AND LICENSES**

The CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect.

**SECTION 18. INDEPENDENCE OF CONTRACT**

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting the CONTRACTOR as an agent, representative or employee of the TOWN for any purpose whatsoever. The CONTRACTOR is to be, and shall remain, an independent contractor with respect to all services performed under this Contract.

#### **SECTION 19. FORCE MAJEURE**

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, State, or Federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Contract for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

#### **SECTION 20. EMPLOYEE STATUS**

Persons employed by the CONTRACTOR in the performance of services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the TOWN'S officers and employees either by operation of law or by the TOWN.

#### **SECTION 21. EQUAL OPPORTUNITY EMPLOYMENT**

CONTRACTOR shall comply with all Federal, State and TOWN laws applicable to the CONTRACTOR services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA") and the South Florida Building Code. The CONTRACTOR is expected to fully comply with all provisions of all laws and the TOWN reserves the right to verify the CONTRACTOR'S compliance with them. Failure to comply with any laws will be grounds for termination of the Contract for cause.

#### **SECTION 22. MEDIATION**

In addition to any other remedy provided by law, the parties may agree to use arbitration or mediation to resolve any controversy or claim arising out of or relating to this Contract. Any controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event arbitration is agreed to by both parties in writing, such controversy or claim shall be submitted to arbitrators selected from the National Panel of The American Arbitration Association.

#### **SECTION 23. RIGHT TO REQUIRE PERFORMANCE**

The failure of the TOWN at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the TOWN thereafter to enforce same, nor shall waiver by the TOWN of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

**SECTION 24. GOVERNING LAW**

The parties agree that this Contract shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 25. CONSENT TO JURISDICTION**

The parties agree that the jurisdiction for any legal action arising out of or pertaining to this Contract shall be with the State Courts of Florida, and specifically, the County or Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, depending upon the respective jurisdictional limit. Each party further agrees that venue for any action to enforce this Contract shall be in Broward County, Florida.

**SECTION 26. LITIGATION**

In the event of any litigation which arises out of, pertains to, or relates to this Contract, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

**SECTION 27. COMPLIANCE WITH LAWS**

The CONTRACTOR shall conduct its operations under this Contract in compliance with all applicable Federal, State and local laws and regulations.

**SECTION 28. SEVERABILITY**

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

**SECTION 29. ASSIGNMENT AND SUBLETTING**

No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.

### **SECTION 30. MODIFICATIONS**

This Contract constitutes the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

### **SECTION 31. LEGAL REPRESENTATION**

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

### **SECTION 32. FUND APPROPRIATION**

The CONTRACTOR understands and agrees that the TOWN, during any fiscal year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Contract shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. CONTRACTOR shall not proceed with services under this Contract without TOWN'S written verification that the funds necessary for CONTRACTOR'S compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The TOWN does not represent that said budget item will be actually adopted, said determination being the determination of the Town Council at the time of the adoption of the budget.

### **SECTION 33. PUBLIC ENTITY CRIME**

CONTRACTOR understands that a person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the TOWN and may not transact business with the TOWN in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. CONTRACTOR herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Contract.

### **SECTION 34. FINANCIAL INTEREST**

CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the TOWN has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no person who acts in the TOWN as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such person, purchasing agent, TOWN elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the

CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

#### **SECTION 35. ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or agreements, whether oral or written.

#### **SECTION 36. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS**

TOWN shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement during normal business hours. CONTRACTOR shall keep such books, records, and accounts reasonably required to document and substantiate CONTRACTOR'S performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Article 2.5.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by TOWN, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless CONTRACTOR is notified in writing by TOWN of the need to extend the retention period. Such retention of such records and documents shall be at CONTRACTOR'S expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either Federal or State law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry.

#### **SECTION 37. PIGGYBACK**

It is contemplated that other governmental entities may piggyback upon this Agreement in whole or in part. Such entities may only do so upon the consent of the CONTRACTOR.

#### **SECTION 38. PAYMENT DISPUTES**

If the TOWN disagrees with any amount stated in any invoice from the CONTRACTOR, the TOWN shall notify the CONTRACTOR of such dispute. The TOWN shall make payment to CONTRACTOR of the undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty five (45) days of the TOWN'S notice of such dispute, the parties shall resolve the dispute in a manner permitted by Florida law. The



existence of a dispute shall not delay payment of undisputed amounts to CONTRACTOR, or relieve CONTRACTOR of its obligations to TOWN under this Agreement.

#### **SECTION 39. RECYCLING GUARANTY**

CONTRACTOR acknowledges the State's seventy-five percent (75%) recycling goal, as defined by Chapter 403, Florida Statutes and applicable regulations promulgated thereunder. In acknowledging the State goal, the CONTRACTOR shall endeavor to divert, as practically feasible, materials for recycling or composting from the Solid Waste delivered by or on behalf of the TOWN, regardless of whether final disposition is a waste-to-energy facility or landfill. Any such diversion shall be recorded and reported to the TOWN on the monthly invoices.

#### **SECTION 40. MOST FAVORED PRICING AND MATERIAL TERMS**

In the event that CONTRACTOR subsequently enters into an agreement for a term of more than 12 months (including renewal and option periods) for the disposal and/or recycling of another governmental entity's waste with a governmental agency (or a private entity that has been delegated to provide the disposal of solid waste and/or recycling for all or substantially all of the solid waste generated within a governmental entity's jurisdiction) generated anywhere within Miami-Dade, Palm Beach, or Broward County (an "Eligible Agreement"), CONTRACTOR shall provide the TOWN with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the TOWN determines that the Eligible Agreement includes a net disposal charge that is less than the Disposal Services Charge set forth herein, or a recycling payment that is greater than the payment set forth herein, the TOWN may provide written notice to CONTRACTOR of TOWN'S determination, and, if the TOWN does so, the Disposal Services Charge shall automatically be reduced to the net disposal charge set forth in the Eligible Agreement, and the Program Recyclable payments to the TOWN shall be increased to the amount set forth in the Eligible Agreement, and such change to be effective retroactive to the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower net disposal charge and greater recyclable payment (subject to annual adjustments as provided above).

For the purposes of clarification, the "net disposal charge" offered under the Eligible Agreement will be the actual per-ton cost to the counterparty to the Eligible Agreement, and shall be determined net of any costs (e.g., pass-throughs, etc.) paid by such counterparty or economic benefits (e.g., signing bonus, revenue sharing, other credits, etc.) received by such counterparty, except for such economic benefits that are as a result of CONTRACTOR operating a Waste Receiving Facility in such counterparty's jurisdiction.

#### **SECTION 41. HEADINGS**

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

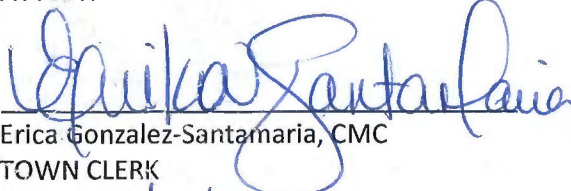
#### **SECTION 42. EXHIBITS**

Each exhibit referred to in this Contract forms an essential part of this Contract. Each such exhibit is a part of this Contract and each is incorporated by this reference.



IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.

ATTEST:

  
Erica Gonzalez-Santamaria, CMC  
TOWN CLERK

Date: 5/16/13

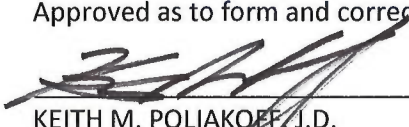
TOWN OF SOUTHWEST RANCHES, FLORIDA  
A municipal corporation

By:

  
Jeff Nelson, Mayor

Date: 5/16/13

Approved as to form and correctness:

  
KEITH M. POLIAKOFF, J.D.  
TOWN ATTORNEY

Date: 5/16/13  
#4691891

CONTRACTOR:

SUN-BERGERON SOLID WASTE SERVICES  
A general partnership

WITNESSES:


Date: 5/9/13

  
Print Name: Lonnie N. Bergeron

Print Title: Manager

Date: 5/9/2013

**EXHIBIT 1**

**DISPOSAL AND ANCILLARY SERVICES FEES**

## TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

## PART VI - FORM B

## DISPOSAL FEE AND ANCILLARY SERVICE FEE PRICE FORM

Bidders wishing to provide Solid Waste disposal services must complete this form in its entirety in ink or typewritten.

Company Name Sun Bergeron Solid Waste Services, JV

## Solid Waste Disposal Fee

	A Fee/Ton	B Estimated Tons/Year	C = A x B Estimated Annual Disposal Fees
Solid Waste (residential and commercial)	43.25	x 11,000 tons =	\$47,5750

## Ancillary Service Fees

All Bidders providing a fee for Solid Waste disposal services must also provide prices for ancillary services. The Town will make a policy decision as to whether these ancillary services will be included in the contract award.

## HHW and E-Waste Collection Events

	A Fee/Event	B Events/Year	C = A x B Estimated Annual Fee
Flat fee for the mobilization of event staff, equipment, and resources needed to conduct collection event	0	x 4 events =	0

## Itemized Disposal and/or Recycling Fees

In the table on the following page, Bidders should indicate the fee or revenue to be billed or paid to the Town for each material type. Bidder should clearly indicate whether Bid price is a fee, revenue, or no charge. All quantities are listed for Bid purposes only. Town makes no guarantee as to actual tonnage expected.

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

	A		B	C = A x B
	Fee	Units	Estimated	Estimated Annual
	Per Pound		Quantity/Year	Fee
			(pounds)	
Televisions (all sizes)	0	Pounds	3,500	0
Computer Monitors/Terminals	0	Pounds	1,100	0
CPU's / Laptops	0	Pounds	1,100	0
Large peripherals (printers, scanners, fax machines, plotters, typewriters, etc.)	0	Pounds	850	0
Small peripherals (keyboards, mice, cables, game hardware, external drives, etc.)	0	Pounds	35	0
Telecommunications devices (desk phones, mobile phones, pagers, handheld devices, etc.)	0	Pounds	125	0
Audio/Video equipment (stereos, VCRs, DVD players, radios, tape players, speakers)	0	Pounds	125	0
Copiers	0	Pounds	125	0
UPS (Uninterrupted Power Supply)	0	Pounds	250	0
Small household electrical appliances (microwaves, power tools, health and beauty, etc.)	0	Pounds	200	0
Laptop Batteries	0	Pounds	125	0
Car/Boat Batteries	0	Pounds	400	0
Rechargeable Batteries	0	Pounds	125	0
Lead Acid Batteries	0	Pounds	200	0
Aerosols	0	Pounds	750	0
Corrosives	0	Pounds	1,250	0
Flammable Liquids	0	Pounds	750	0
Flammable Solids	0	Pounds	250	0
Oxidizers	0	Pounds	1,250	0
Oil Paint	0	Pounds	2,000	0
Latex Paint	0	Pounds	1,500	0
Poisons	0	Pounds	100	0
Used Oil/Oil Filters	0	Pounds	1,100	0
Propane Tanks	0	Pounds	80	0
<b>Total Estimated Annual Fee</b>				<b>0</b>

\* Quantities listed above are for Bid purposes only and are based on 0.7% of the HHW collected in Broward County in FY 2012. The Town makes no guarantee as to actual tonnage expected.

**Total Drop-Off HHW Service Fee**

(Annual Flat Fee + Estimated Annual Itemized Fees )

0

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

**Drop-Off Collection Events**

	A Fee/Event	B Events/Year	C = A x B Estimated Annual Fee
Flat fee for the mobilization of event staff, equipment, and resources need to host collection event	0	x 4 events =	0
	A Fee/Ton	B Estimated Tons/Year*	C = A x B Estimated Annual Bulk Waste Disposal Fees
Bulk Waste Disposal Fee	0	X 200 tons	0

\* Quantity listed for Bid purposes only. Town makes no guarantee as to actual tonnage expected.

I, Lonnie Bergeron (name), the Manager (title)

of Sun Bergeron Solid Waste Services, JV

(bidder) swear or affirm that all information submitted with this bid is true, and that I am authorized to complete this Price Form on behalf of the company.

  
Signature

April 19, 2013  
Date

**EXHIBIT 2**

**PROGRAM RECYCLABLES REVENUE**



## TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

## PART VI - FORM C

## PROGRAM RECYCALBLES REVENUE FORM

Company Name Sun-Bergeron Solid Waste Services, JV

**Bidders wishing to provide Recyclable Materials processing services must complete this form in its entirety in ink or typewritten.**

Bidder shall enter the percentage of the Average Market Value (AMV) less a Contractor's fee of \$50.00 that it will pay the Town for each Ton of inbound Program Recyclables delivered by the Town or its agents to the Designated Recycling Facility, as determined by the Designated Recycling Facility scales.

The payment per Ton shall be calculated as follows:

1. Each month, the Contractor shall calculate the AMV of the Town's Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in [RecyclingMarkets.net](http://RecyclingMarkets.net) multiplied by the composition percentages of the Town's Program Recyclables, as defined in the table below, which calculates the AMV for March 2013.

## Calculation of the March 2013 Average Market Value

Material	Index Description	Index Value (Mar '13)	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Newspaper	PS 8 baled, F.O.B. seller's dock	77.5	\$77.50	17.0%	\$13.18
Corrugated containers	PS 11 baled, F.O.B. seller's dock	112.5	\$112.50	10.0%	\$11.25
Mixed paper	PS 1 baled, F.O.B. seller's dock	70	\$70.00	24.5%	\$17.15
Steel cans	\$/Ton, sorted, baled and delivered	115.0	\$115.00	3.7%	\$4.26
Aluminum cans	Cents/lb., sorted, baled and delivered	79.5	\$1,590.00	2.4%	\$38.16
Plastics #3-#7	Commingled (#3-7, cents/lb, baled and picked up)	0.3	\$6.00	5.3%	\$0.32
PET	Cents/lb., baled and picked up	20.8	\$416.00	5.7%	\$23.71
Natural HDPE	Cents/lb., baled and picked up	32.5	\$650.00	2.2%	\$14.30
Colored HDPE	Cents/lb., baled and picked up	25.8	\$516.00	3.2%	\$16.51
Glass (3 Mix)	\$/Ton, delivered	0.0	\$0.00	22.5%	\$0.00
Polycoated Cartons	None at this time	0.0	\$0.00	0.5%	\$0.00
Contamination	N/A	N/A	\$0.00	3.0%	\$0.00
				100.0%	\$138.84

Note: The index values for March 2013 are used for estimation purposes only, and are subject to fluctuation as determined by Secondary Fibers and Material Pricing found on [RecyclingMarkets.net](http://RecyclingMarkets.net). Prices to be used are the first published Regional Average prices for the Southeast USA in the month for which payment is being made. No market index currently exists for polycoated cartons in [RecyclingMarkets.net](http://RecyclingMarkets.net); therefore, the value is set at \$0. When a market index for polycoated cartons or aseptic containers becomes available on [RecyclingMarkets.net](http://RecyclingMarkets.net), it will be utilized.

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

2. A fifty dollar (\$50.00) Contractor's Fee shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A(2) of the draft contract, provided in Attachment A.
3. The Contractor shall pay the Town a percentage, as bid below, of the remaining amount (AMV less Contractor's fee) for each Ton of inbound Program Recyclables delivered during that month.

**Bidder shall enter in the yellow cells, below, the percentage amount that it will pay the Town for inbound Program Recyclables.**

The AMV is intended to be used as a market index and does not necessarily reflect the commodity revenue received by the Contractor; therefore, the Bidder should determine the Bid Percentage accordingly. Any and all costs associated with processing, marketing, and transporting Program Recyclables, including costs for rejects and residue disposal, are the responsibility of the Contractor.

**Program Recyclables Revenue Bid\***

\$138.84	-	\$50.00	X	40 %	=	\$ 35.54
Jan 2013 AMV		Contractors fee		Bid Percentage		Corresponding revenue per ton based on AMV and Bid Percentage

\* \$/ton based on January 2013 AMV for estimated purposes only, and is subject to monthly market fluctuation, as specified herein.

I, Lonnie Bergeron (name), the Manager (title)

of Sun-Bergeron Solid Waste Services, JV

(bidder) swear or affirm that all information submitted with this bid is true, and that I am authorized to complete this Recyclables Revenue Form on behalf of the company.



Signature

4/19/2013

Date





June 10, 2013

**By E-Mail**

City of Tamarac  
Troy Gies, Budget and Contracts Manager  
Public Services Department - Public Works  
6011 Nob Hill Road  
Tamarac, FL 33321

Dear Mr. Gies:

You have our consent and authorization to piggyback on the competitive contracts awarded by Southwest Ranches or our other contracts with Miramar, Deerfield Beach (yet to be awarded), or Broward County (negotiated contract and ILA) in whole or in part as the City of Tamarac deems appropriate. The SW Ranches does contain a most favored pricing provision (Section 40), and should Deerfield Beach award a contract to Sun Bergeron for Recyclables at a revenue share rate of 45.01%, then the SW Ranches contract would be adjusted to match such rate.

We look forward to continuing to serve the City's solid waste needs.

Sincerely,

Sun-Bergeron Solid Waste Services, JV

/s/

Phillip T. Medico, Jr.

A handwritten signature in black ink, appearing to read "Phillip T. Medico, Jr.", is written over the printed name.



## Title - TO2283 - Temporary Housing Ordinance

Item 8 (a) on Ordinances - First Reading: (TO2283) Motion to adopt an ordinance of the City Commission of the City of Tamarac, Florida, **on first reading** amending Chapter 5, entitled "Buildings and Building Regulations," of the City of Tamarac Code of Ordinances by adopting a new article XII, entitled, "Emergency Temporary Housing," to provide for the use of temporary housing during declared housing emergencies; providing for codification; providing for conflicts; providing for severability; providing for an effective date. - ***Community Development Director Jennifer Bramley, Chief Building Director Claudio Grande and Housing and Neighborhood Programs Manager Angela Bauldree***

### **ATTACHMENTS:**

Name:

❏ [TO#2283-Temp\\_Housing\\_Ord-Staff\\_report.doc](#)

❏ [revTO\\_2283-Temporary\\_Housing\\_Ordinance-FINAL\\_\(2\).docx](#)

Description:

Staff Report

TO2283 - Temporary Housing Ordinance

**CITY OF TAMARAC**  
**INTEROFFICE MEMORANDUM (13-06-001M)**  
**COMMUNITY DEVELOPMENT**

**TO: Michael C. Cernech,**  
**City Manager**

**DATE: 12 June 2013**

**FROM: Jennifer K. Bramley, Director of**  
**Community Development**

**RE: Adoption of Emergency**  
**Temporary Housing Ordinance**  
**Temp. Ord. # 2283**  
**Case # 8-MI-13**

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**Recommendation:** The Director of Community Development recommends the Mayor and the City Commission approve first reading of Ordinance 2283 regarding the emergency housing ordinance allowing single-family (1-2 unit) property owners to place approved temporary housing units on their properties following an emergency declaration by the City Commission within specific areas.

**Issue:** The Fire Department estimates after the 2005 storm season approximately 75% of homeowners who were displaced from their homes never returned to the City of Tamarac. This has a negative effect on both the homeowner(s) as well as the City. Those who work, attend school and have obligations in Tamarac are more likely to recover when given the opportunity to remain at their residence. Residents whose homes are seriously affected by a disaster will most likely prefer to remain on their properties during the rehabilitation process to protect their homes, monitor the repair process, as well as remain active in the community to which they reside. Through the Building Permit process, single family home owners whose residence has been deemed uninhabitable would be able to install certain temporary structures on their property remaining local and better able to continue on with life after a disaster. Additionally, the local economy would be less impacted by retaining these displaced residents.

**Background:** The Affordable Housing Advisory Committee and staff representing Fire, Building, Planning and Housing met on March 21, 2013 to discuss the logistics of this ordinance. Defining eligible structures, determining the permitting process and protecting all planning and zoning requirements were discussed. This ordinance will allow the placement of Building Department approved structures on a temporary basis in City Commission defined areas following a disaster. The process covers inspections, time frames and other pertinent requirements such as: the requirement that a permit to repair the main structure be applied for within 90 days, the removal of the temporary structure after repairs are completed, and intermittent inspections to be conducted by the Building Department to ensure the temporary structure is safe and secure.

**Fiscal Impact:** There is no financial commitment by the City for the adoption of this ordinance. Revenue from the building permit process will be reported by the Building Department. This agenda item is consistent with the City's Strategic Plan Goal #5; Vibrant Community.

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Jennifer K. Bramley  
Director of Community Development

JKB/ab  
Attachment: Temporary Ordinance #2283

ORDINANCE NO. 2013- \_\_\_\_\_

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AMENDING CHAPTER 5, ENTITLED "BUILDINGS AND BUILDING REGULATIONS," OF THE CITY OF TAMARAC CODE OF ORDINANCES BY ADOPTING A NEW ARTICLE XII, ENTITLED, "EMERGENCY TEMPORARY HOUSING," TO PROVIDE FOR THE USE OF TEMPORARY HOUSING DURING DECLARED HOUSING EMERGENCIES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City, under its Home Rule authority, has the authority to regulate housing within the City of Tamarac; and

WHEREAS, in the event of a natural or man-made disaster or emergency, the City Commission finds that it will be in the best interest of the health, safety, and welfare of the citizens of the City of Tamarac to allow for the use of temporary housing; and

WHEREAS, the City Commission finds that the use of temporary housing requires proper permitting and regulation in order to insure that residents and neighborhoods are protected during the time of an emergency; and

WHEREAS, the City Commission finds that the adoption of these ordinance provisions is in the best interest of the health, safety, and welfare of the residents of the City of Tamarac.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AS FOLLOWS:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. That Chapter 5, "Buildings and Building Regulations", of the City of Tamarac Code of Ordinances be, and the same is hereby amended by enacting a new Article XII, entitled "Emergency Temporary Housing", to read as follows:

## **ARTICLE XII. Emergency Temporary Housing**

### **Section 5-400. Housing Emergency Declaration**

(a) Activation. Upon declaration of a state of emergency by the City Commission, and during the pendency thereof, the City Commission, as a part of the original declaration or at any time during the duration of a declared state of emergency, may declare a state of housing emergency for all or any part of the City of Tamarac.

(b) Areas Embraced. Housing Emergency Declaration must define the boundaries of all areas subject to the terms of this Section. The areas embraced may include the entire area of the City, or any part thereof.

(c) Termination

(1) A Housing Emergency Declaration survives the termination of the Declaration of Emergency, and may only terminate, in whole or in part, by formal action of the City Commission to amend or terminate the areas embraced by the Emergency Housing Declaration.

(2) Partial Termination. Through the adoption of a resolution, the City Commissioners may amend the Housing Emergency Declaration to either expand or contract the areas embraced. The expansion or contraction of

the areas embraced shall be supported by findings regarding the status of the housing stock in the area being considered.

- (3) The status of the housing emergency shall be evaluated 90 days after its declaration and every 90 days thereafter as long as the Housing Emergency Declaration is in effect to determine if formal action by the City Commission is warranted to amend or terminate the Declaration.

(d) Effect of a Housing Emergency Declaration. Upon the activation of a Housing Emergency, the provisions of this ordinance shall become applicable in all the areas embraced by the Housing Emergency Declaration.

#### **Section 5-401. Regulatory Provisions**

**(a) Definitions:**

- (1) Essential Services: Services necessary to a basic standard of living and the general welfare of society. Services may include, but not limited to the following: electrical services, gas services, water and wastewater treatment services.
- (2) Owner-Builder: Owners of property, when acting as their own contractor and providing direct, onsite supervision themselves of all work performed not performed by licensed contractors, when building or improving single-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease by the owner-builder within one (1) year after completion of same.
- (3) Pre-Fabricated Dwelling: A unit that is factory built or built on site from modular parts and generally does not have wheels.

- (4) Recreational Vehicle: A vehicle built on a single chassis, 400 square feet or less, designed to be self-propelled or permanently towable by a light duty truck, and designed as temporary living quarters for recreational, camping, travel, or seasonal use.
  - (5) Temporary Housing: Temporary accommodations for individuals or families whose homes are made uninhabitable by an emergency or a major disaster as per section 5-400 (a) of this ordinance and ~~that~~ meets the physical accessibility needs of the household and includes essential utilities, access to areas for food preparation, and bath facilities in a context that allows a family to live together with a reasonable amount of privacy for a period generally up to 18 months.
  - (6) Temporary Housing Unit: Manufactured housing, recreational vehicle, travel trailer, or pre-fabricated dwelling.
  - (7) Wrap-Around Services: The delivery of infrastructure and additional essential services to address disaster-related needs of affected residents living in community sites. These services go beyond the physical need for housing or political subdivision of a State and typically include basic social services and access to utilities, transportation, grocery stores, and medical and employment facilities.
- (b) Single-Family or Two-Family Residential Parcels. Upon the activation of a Housing Emergency Declaration and subject to the conditions contained in this Section, temporary housing units may be used as temporary housing by individuals who have been displaced from their private, primary residence that is deemed uninhabitable due to damage from a disaster, given the following conditions. Such primary residence is

defined as a parcel normally designated by the applicable future land use plan map and/or by the applicable zoning map as being a detached, single family residential parcel, or a parcel allowing a duplex residence.

- (1) A permit for a temporary housing unit must be obtained through the City of Tamarac Building Department.
- (2) The permit for a temporary housing unit shall be issued for no more than ninety (90) days. Permit extensions may be allowed as warranted up to a maximum of eighteen (18) months.
- (3) A maximum of one (1) temporary housing unit for each housing unit legally established on the property will be allowed on an existing home site provided:
  - a. The home located on the site has been declared uninhabitable by the City's Building Official, or his/her designee.
  - b. The water service and wastewater service must be properly connected to a functioning water service and sanitary sewer system or septic system in accordance with the codes in effect at the time. However, if connection to a functioning service is not feasible, other water and wastewater services may be utilized subject to the City's Building Department approval.
  - c. Setback requirements will be waived during the duration that the temporary housing unit is permitted. However, the temporary housing unit cannot extend into any adjacent public right-of-way, easement, or onto any adjacent property.



- d. Electrical service to a commercial source (FPL) must be established. If there is no power available from FPL, the use of a generator will be allowed until power is restored. The use of the generator shall be suspended within 7 days of power restoration.
  - e. Only a licensed contractor or an owner-builder will be allowed to apply for a permit and perform any work related to the connection of plumbing, electrical and mechanical service systems at the site.
- (4) An application for a building permit to repair the residential structure shall be submitted no later than sixty (60) days after issuance of the temporary housing permit.
  - (5) The temporary housing unit must be removed from the property no later than thirty (30) days from the date of the issuance of the certificate of occupancy, or a certificate of completion for the residential structure.
  - (6) The City of Tamarac Building Department has the right to revoke the temporary housing permit in the event there exists unsafe or unsanitary conditions on the property, or in the event the owner does not comply with the provisions of this Section.

Section 3. It is the intention of the City Commission of the City of Tamarac that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Tamarac, Florida, and that the Sections of this ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

Section 4. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

Section 5. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6. This Ordinance shall become effective on immediately upon adoption, as provided by Florida law.

PASSED, FIRST READING this \_\_\_\_ day of \_\_\_\_\_, 2013.

PASSED, SECOND READING this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST: BY: \_\_\_\_\_  
MAYOR BETH TALABISCO

\_\_\_\_\_  
PAT TUEFEL, CMC  
INTERIM CITY CLERK

RECORD OF COMMISSION VOTE: 1<sup>ST</sup> Reading

MAYOR TALABISCO \_\_\_\_\_  
DIST 1: COMM. BUSHNELL \_\_\_\_\_  
DIST 2: COMM. ATKINS-GRAD \_\_\_\_\_  
DIST 3: COMM. GLASSER \_\_\_\_\_  
DIST 4: V/M DRESSLER \_\_\_\_\_

I HEREBY CERTIFY that  
I have approved this  
ORDINANCE as to form:

\_\_\_\_\_  
SAMUEL S. GOREN  
CITY ATTORNEY

RECORD OF COMMISSION VOTE: 2<sup>ND</sup> Reading

MAYOR TALABISCO \_\_\_\_\_  
DIST 1: COMM. BUSHNELL \_\_\_\_\_  
DIST 2: COMM. ATKINS-GRAD \_\_\_\_\_  
DIST 3: COMM. GLASSER \_\_\_\_\_  
DIST 4: V/M DRESSLER \_\_\_\_\_



## Title - TR12348 - Tamarac Recreation Leases

Item 6 (b) on the Consent Agenda. (TR12348) A Resolution by the City Commission of the City of Tamarac, finding declaring its intent to enter an agreement with Tamarac Enterprises, Inc., the Behring Foundation, Tams Association, Inc., Tamarac Lakes North Association, Inc. and Tamarac Lakes South Civic Association, Inc., to deed and release any interest the City might have had in the recreational facilities and properties, in order to give effect to the city's prior resolution numbers R-71-12, R-77-177, R-77-187 and R-93-50 to rescind, cancel and terminate any rights and obligations of the City pursuant to the deed restrictions pertaining to Sections 1 and 2 of Tamarac Lakes, the indenture of mortgage, and the agreement dated January 3, 1967, attached hereto as Exhibit "A" and incorporated herein; directing the appropriate City officials to take any and all action necessary to effectuate the intent of this resolution; providing for conflicts; providing for severability and providing for an effective date. - **Community Development Director Jennifer Bramley**

### ATTACHMENTS:

Name:

Description:

<a href="#">1306005m Tamarac Rec Leases.pdf</a>	TR12348 - Recreation Leases Memo
<a href="#">TR12348 Tamarac Lakes - Rec Leases #1.doc</a>	TR12348 - Tamarac Lakes Rec Leases #1
<a href="#">Exhibit 1- Agreement to Assign Recreation Leases.doc</a>	Exhibit 1 - Agreement to Assign Recreation Leases
<a href="#">Exhibit A to Agreement - Satisfaction of indenture of mortgage by Behring revised to attach retired bonds.pdf</a>	Exhibit A to Agreement-Satisfaction of Mortgage
<a href="#">Exhibit B - Quit Claim deed Tamarac to TLS revised.pdf</a>	Exhibit B - Quit Claim Deed
<a href="#">Exhibit B - Warranty Deed City Tamarac to TEMS with lease revised.pdf</a>	Exhibit B - Warranty Deed COT to TEMS
<a href="#">Exhibit B - Warranty Deed City Tamarac to TLN with lease revised.docx</a>	Exhibit B - Warranty Deed - COT to TLN
<a href="#">Exhibit C to Agreement - TE limited no lien affidavit.docx</a>	Exhibit C to Agreement TE
<a href="#">Exhibit D - Corporate Resolution Certificate of Incumbancy TE.doc</a>	Exhibit D - Corporate Resolution-Certificate of Incumbancy
<a href="#">Exhibit E - Assignment of Rec Lease TEMS.docx</a>	Exhibit E - Assignment of Rec Leases TEMS
<a href="#">Exhibit E - Assignment of Rec Lease TLN.docx</a>	Exhibit E-Assignment of Rec Leases TLN
<a href="#">Exhibit E - Assignment of Rec Lease to Tam Lakes South Civic Assoc.docx</a>	Exhibit E - Assignment of Rec Leases to to Tam Lakes South Civic
<a href="#">Exhibit F- Satisfaction of Mortgage by Bank Of America.pdf</a>	Exhibit F - Satisfaction of Mortgage by BOA
<a href="#">Exhibit G - Mutual Release Rec Lease.docx</a>	Exhibit G - Mutual Releases
<a href="#">Site Location Map - Tamarac Lakes 1.pdf</a>	TR12348 - Site Location Map
<a href="#">Site Location Map - Tamarac Lakes 2.pdf</a>	TR12348 - Site Location Map
<a href="#">Site Location Map - Tamarac Lakes 3.pdf</a>	TR12348 - Site Location Map

**CITY OF TAMARAC**  
**INTEROFFICE MEMORANDUM (13-06-006M)**  
**COMMUNITY DEVELOPMENT**

**TO: Michael C. Cernech,**  
**City Manager**

**DATE: June 12, 2013**

**FROM: Jennifer K. Bramley,**  
**Director of Community Development**

**RE: Recreation Leases**

**TEMP 12348**  
**RESO**  
**NO.:**

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**Recommendation:** The Director of Community Development recommends that the City Commission adopt Temporary Resolution Number 12348 supporting the release of any interest the City might have in the recreational facilities and transfer title to the properties in Sections 1 and 2 of Tamarac Lakes including Tamarac Lakes Second, Tamarac Lakes North and Tamarac Lakes North Section 2 and Tamarac Lakes South and authorize the appropriate City Officials to execute the applicable documents.

**Issue/Background:** The communities known as Tamarac Lakes, Tamarac Lakes North and Tamarac Lakes South were developed in the 1960's by the Behring Corporation. Construction of the recreation areas as well as water and wastewater facilities within these communities was funded by the issuance of utility bonds. Tamarac Enterprises was originally intended to hold title to the recreation properties which were leased to the Tamarac Lakes communities with Behring as the bondholder. Payment on these bonds was evenly distributed among the lot owners for the three communities as stipulated by recorded deed restrictions. The Tamarac Lakes communities subject to this resolution and the associated recreation areas are shown on the location maps attached to this staff report.

On January 3, 1967 the City Commission of the City of Tamarac entered into an agreement with Tamarac Enterprises to collect the payments from the lot owners within the three communities. The City of Tamarac accepted the obligation to maintain the recreation facilities located upon the properties when the leases were executed. As stipulated within the Indenture of Mortgage for the bond series, upon satisfaction of payments of the bonds, the title to the recreation areas would transfer to the City of Tamarac.

In 1977 the City of Tamarac, pursuant to Resolutions 71-12, 77-177 and 77-187 terminated the January 3, 1967 agreement thus relinquishing the City's claims and interest to the recreation parcels. Tamarac Enterprises continues to hold title to the recreation areas for Tamarac Lakes and Tamarac Lakes North. There was a lawsuit between the Behring Corporation and the owners of Tamarac Lakes South upon the settlement of which title was to transfer to the HOA instead of the City once the bonds were paid in full and retired. The deed for the Tamarac Lakes South property should have been held in trust but was recorded indicating that title had been transferred when in fact title could not be transferred until the bonds were paid in full and retired. The Broward County Property Appraisers shows that the recreation areas in Tamarac Lakes South are owned by the Tamarac Lakes South Civic Association when by agreement the property is owned by Tamarac Enterprises.

The bonds were donated by Mr. Behring to the Behring Foundation. The Behring Foundation is extending an offer for the retirement of the bonds and transfer of title to the properties to the respective communities upon receipt of a lump sum payment in the sum of two years of payments for each community. This will result in a significant discount for the property owners while simplifying transfer of title.

**Analysis:** Beth Linde, Attorney for Tamarac Enterprises writes “To the extent that the documents leave any confusion whether the City of Tamarac was to be recipient of title to the property, it is requested that the City participate in transfer of the title to the communities at this time assuming the communities are willing to accept the offer of the Behring Foundation and pay two years of payments, in a lump sum, in return for title to the properties, full responsibility therefore and release from the Behring Foundation, Mr. Behring, Tamarac Enterprises and the City from same”.

Staff is recommending that the City Commission authorize the appropriate officials to execute the following documents (attached);

Quit Claim Deed and Special Warranty Deeds

- To grant the properties to the respective communities

Mutual Release

- To release each party for any claims which may arise in relation to the Recreation Leases or the associated bonds.

Agreement to Assign Recreation Leases, Retire Utilities and Recreation Bonds and Transfer Title to Property

- To ensure the City and Tamarac Enterprises agree to execute separate Deeds for each of the three Properties to the respective Communities contingent upon performance of the other parties (i.e. payment in full of the bonds, etc.)
- To agree to release any interest the City Of Tamarac, the Behring Foundation and Tamarac Enterprises may have had pursuant to the Recreation Leases

Staff's only stipulation upon review of the documents in conjunction with the City Attorney's Office is that each community record a restriction upon the property to restrict use of these parcels to recreational uses in perpetuity. Given this restriction, the City of Tamarac has no further interest in the recreation parcels as stated in 1977 and 1996 except to facilitate expedient transfer of title to the communities the recreation areas are intended to benefit.



---

Jennifer K. Bramley  
Director of Community Development

JKB/alg

Attachments:      Temporary Resolution No. 12348  
                         Quit-Claim Deeds and Special Warranty Deed  
                         Mutual Release  
                         Agreement to Assign Recreation Leases, Retire Utilities and Recreation  
                         Bonds and Transfer Title to Property  
                         Site Location Maps

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. 2013 -

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FINDING DECLARING ITS INTENT TO ENTER AN AGREEMENT WITH TAMARAC ENTERPRISES, INC., THE BEHRING FOUNDATION, TEMS ASSOCIATION, INC., TAMARAC LAKES NORTH ASSOCIATION, INC. AND TAMARAC LAKES SOUTH CIVIC ASSOCIATION, INC., TO DEED AND RELEASE ANY INTEREST THE CITY MIGHT HAVE HAD IN THE RECREATIONAL FACILITIES AND PROPERTIES, IN ORDER TO GIVE EFFECT TO THE CITY'S PRIOR RESOLUTION NUMBERS R-71-12, R-77-177, R-77-187 AND R-93-50 TO RESCIND, CANCEL AND TERMINATE ANY RIGHTS AND OBLIGATIONS OF THE CITY PURSUANT TO THE DEED RESTRICTIONS PERTAINING TO SECTIONS 1 AND 2 OF TAMARAC LAKES, THE INDENTURE OF MORTGAGE, AND THE AGREEMENT DATED JANUARY 3, 1967, ATTACHED HERETO AS EXHIBIT 1 AND INCORPORATED HEREIN; DIRECTING THE APPROPRIATE CITY OFFICIALS TO TAKE ANY AND ALL ACTION NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Tamarac, did on January 3, 1967, pursuant to Resolution 66-2, enter an agreement with Tamarac Enterprises, Inc., to collect from lot owners in Sections 1 and 2 of Tamarac Lakes, including Tamarac Lakes and Tamarac Lakes 2<sup>nd</sup> Section, Tamarac Lakes North and Tamarac Lakes North 2<sup>nd</sup> Section, and Tamarac Lakes South, pursuant to Recreation Leases set forth in the Deed Restrictions of each of the three Communities, as set forth in the three respective Deed Restrictions affecting these three properties. The Recreation Leases are recorded in the Public Records of Broward County, Florida at Official Records Book 2779, Page 97 for TEMS Association, Inc., Official Records Book 3049, Page 392 (rerecorded in Official Records Book 3064, Page 834) for Tamarac Lakes North Association, Inc., and Official Records Book 3264, Page 507 for Tamarac Lakes South Civic Association, Inc., respectively, and which were assigned to Tamarac Enterprises, Inc., which Assignment is recorded at Official Records Book 3564, Page 827, in the Public Records of Broward

County, Florida, by the City of Tamarac, which had been assigned same by Tamarac Lakes, Inc. previously, which Assignments are recorded in Official Records Book 2790, Page 702 and Official Records Book 3053, Page 192 of the Public Records of Broward County, Florida. The Original Deed Restrictions are recorded in the Public Records of Broward County, Florida, at Official Records Book 2765, Page 450 for TEMS Association, Inc., Official Records Book 3049, Page 384 (rerecorded at Official Records Book 3064, Page 826) for Tamarac Lakes North Association, Inc., and Official Records Book 3264, Page 499 for Tamarac Lakes South Civic Association, Inc., as they may have been amended, respectively; and

WHEREAS, the City Commission of the City of Tamarac, pursuant to Resolution Numbers 71-12, 77-177, 77-187 and 93-50, has previously declared that it rescinded, cancelled and terminated the agreement dated January 3, 1967, relinquishing and releasing any and all of the City's claims and interests to the Recreation Leases and properties; and

WHEREAS, Tamarac Enterprises is currently the collection agent, collecting payments by the members of the Communities, pursuant to Recreation Leases; and

WHEREAS, such payments pursuant to such Recreation Leases are security interests of Utilities and Recreation Bonds, Series A, of Tamarac Enterprises, issued in the original total amount of \$1,750,000.00, currently held by The Behring Foundation ("the Bonds"), which Bonds are to be retired upon payment in full; and

WHEREAS, The Behring Foundation has offered to surrender and retire said bonds and waive any claims for additional payments of principal or interest thereupon, releasing any claims it may have in the properties, upon a lump sum payment in the total sum of two years (24 months) payments pursuant to the Recreation Leases, from each of the three Communities, to Tamarac Enterprises, to pay the proceeds to The Behring Foundation,

which the three Communities have agreed to do in consideration for the assignment of the Recreation Leases and the transfer of title of the properties subject to the Recreation Leases each to the three Communities respectively, with the City of Tamarac and Tamarac Enterprises releasing any interests or claims they may have in the properties or the Recreation Leases; and

WHEREAS, title to the Properties is currently held by Tamarac Enterprises, although Deeds were recorded transferring such title to the City of Tamarac and although the City recorded a Quit Claim Deed of the Tamarac Lakes South recreation property to Tamarac Lakes South Civic Association, Inc., such action occurred prior to the settlement of the outstanding bonds; and

WHEREAS, an Indenture of Mortgage from Tamarac Enterprises., which was recorded in Official Records Book 3564, Page 828 of the Public Records of Broward County, Florida, was executed and recorded to secure the repayment of the Bonds, held in trust by trustee, Boulevard Bank of Miami, with Bank of America, N.A., as the current successor in interest as trustee; and

WHEREAS, pursuant to the Indenture of Mortgage, deeds conveying right, title and interest in the recreation properties to the City were executed, to be held in trust, and delivered to the City of Tamarac upon the retirement of the Bonds or the purchase of the facilities by the City, as set forth therein; and

WHEREAS, the City intended to relinquish its rights, title, interest and claims to the properties pursuant to the prior Resolution Numbers 71-12, 77-177, 77-187 and 93-50 and hereby seeks to give effect to same, relinquishing any interest it may have in the properties and transferring same to the respective communities upon the performance of the terms of the Agreement to Assign Recreation Leases, Retire Utilities and Recreation Bonds and Transfer Title to Property; and



WHEREAS, the City of Tamarac hereby intends to adopt, approve and execute the Agreement to Assign Recreation Leases, Retire Utilities and Recreation Bonds and Transfer Title to Property, and as set forth therein, to execute Releases and Deeds to the properties to the respective Communities, contingent upon the performance by the Parties of the other terms agreed to therein, in order to give effect to its prior attempts to relinquish, release, rescind and terminate the agreement dated January 3, 1967, and to release any other rights and interests the City of Tamarac may have in the properties and Recreation Leases, as well as to execute any other documents necessary to effect same;

WHEREAS, the City Commission finds the action set forth herein to be consistent with prior resolutions of the City Commission and in the best interests of the citizens and residents of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA:

Section 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct, and are incorporated herein by this reference. All exhibits attached hereto are incorporated herein and made a specific part of this resolution.

Section 2: The City of Tamarac does hereby reaffirm Resolution Numbers 71-12, 77-177, 77-187 and 93-50, previously passed, adopted and approved by the City Commission of the City of Tamarac.

Section 3: The City Commission does hereby approve the execution of the Agreement to Assign Recreation Leases, Retire Utilities and Recreation Bonds and Transfer Title to Property, attached hereto as Exhibit 1, including all exhibits attached thereto, and any other documents necessary to give effect to the Agreement to transfer title to the properties subject to the Recreation Leases to the respective communities and release any interests or claims therein.

Section 4: The City of Tamarac does hereby acknowledge and agree that it has no interest or claim in the Recreation Leases or the properties subject thereto, now or upon the retirement of the Bonds and Assignment of the Recreation Leases and transfer of title to the respective Communities.

Section 5: The City Commission hereby authorizes and directs the appropriate City Officials to do all things necessary and expedient to effectuate the intent of this Resolution.

Section 6: All resolutions inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

Section 7: If any section, sentence, clause, or phrase of this resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this resolution.

Section 8: This resolution shall become effective upon its passage and adoption by the City Commission.

PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF TAMARAC,  
FLORIDA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

CITY OF TAMARAC FLORIDA

\_\_\_\_\_  
BETH TALABISCO, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA TEUFEL, CMC  
INTERIM CITY CLERK

RECORD OF COMMISSION VOTE:

MAYOR TALABISCO \_\_\_\_\_  
DIST 1: COMM. BUSHNELL \_\_\_\_\_  
DIST 2: COMM. ATKINSGRAD \_\_\_\_\_  
DIST 3: COMM. GLASSER \_\_\_\_\_  
DIST 4: V/M. DRESSLER \_\_\_\_\_

I HEREBY CERTIFY THAT I HAVE  
APPROVED THIS RESOLUTION  
AS TO FORM

\_\_\_\_\_  
SAMUEL S. GOREN  
CITY ATTORNEY

## **EXHIBIT 1**

### **AGREEMENT TO ASSIGN RECREATION LEASES, RETIRE UTILITIES AND RECREATION BONDS AND TRANSFER TITLE TO PROPERTY**

THIS AGREEMENT to Assign Recreation Leases, Retire Bonds and Transfer Title to Property, is hereby entered by and between, THE BEHRING FOUNDATION ("TBF"), TAMARAC ENTERPRISES, INC. ("TE"), TEMS ASSOCIATION, INC. (Tamarac Lakes 1 & 2) ("TEMS"), TAMARAC LAKES NORTH ASSOCIATION, INC. ("TLN"), TAMRAC LAKES SOUTH CIVIC ASSOCIATION, INC. ("TLS"), and the CITY OF TAMARAC ("the City") (collectively, "the Parties").

#### **WITNESSETH:**

WHEREAS, TE is the collection agent, currently collecting payments by the members of TEMS, TLN and TLS (collectively "the Communities"), pursuant to Recreation Leases, as set forth in the three respective Deed Restrictions affecting these three properties, which Recreation Leases are recorded in the Public Records of Broward County, Florida at Official Records Book 2779, Page 97 for TEMS, Official Records Book 3049, Page 392 (rerecorded in Official Records Book 3064, Page 834) for TLN, and Official Records Book 3264, Page 507 for TLS, respectively, and which were assigned to TE, which Assignment is recorded at Official Records Book 3564, Page 827, in the Public Records of Broward County, Florida, by the City of Tamarac, which had been assigned same by Tamarac Lakes, Inc. previously, which Assignments are recorded in Official Records Book 2790, Page 702 and Official Records Book 3053, Page 192 of the Public Records of Broward County, Florida. The Original Deed Restrictions are recorded in the Public Records of Broward County, Florida, at Official Records Book 2765, Page 450 for TEMS, Official Records Book 3049, Page 384 (rerecorded at Official Records Book 3064, Page 826) for TLN, and Official Records Book 3264, Page 499 for TLS, as they may have been amended, respectively;

WHEREAS, such payments pursuant to such Recreation Leases are security interests of Utilities and Recreation Bonds, Series A, of TE, issued in the original total amount of \$1,750,000.00, currently held by TBF ("the Bonds"), which Bonds are to be retired upon payment in full;

WHEREAS, TBF has offered to surrender and retire said bonds and waive any claims for additional payments of principal or interest thereupon, releasing any claims it may have in the properties, upon a lump sum payment in the total sum of two years (24 months) payments pursuant to the Recreation Leases, from each of the three Communities, to TE, to pay the proceeds to TBF;

WHEREAS, the offer by TBF is contingent upon receipt of payment from all three Communities;

WHEREAS, each of the Communities has agreed to make such payment contingent upon the City and TE agreeing to Deed title to the three Properties and assign the Recreation Leases to the respective Communities upon such payment having been made, which Properties are described as follows:

TEMS:

All that part of the E ½ of the West ½ of the SE ¼ of the SW ¼ and the E ½ of the SE ¼ of the SW ¼ of Section 16, Township 49 South, Range 42 East, Broward County, Florida, lying North of the North right-of-way line of Prospect Field Road; less the East 890 feet thereof and less the following described part thereof: Beginning at the Southwest corner of the lands platted on Block 7, Tamarac Lakes, according to the Plat thereof, recorded in Plat Book 58, Page 40, of the Public Records of Broward County, Florida; thence N 77 degrees 39' 11" W, along the said North right-of-way line of Prospect Field Road, 19.03 feet to a point; thence N 12 degrees 20' 49" E, 72 feet to a point; thence S 77 degrees 39' 11" E, 1.51 feet to the Northwest corner of Lot 10, Block 7, of said Tamarac Lakes, thence S 12 degrees 20' 49" West, along the West line of said Lot 10, Block 7, of said Tamarac Lakes, 74.10 feet to the Point of Beginning.

TLN:

Parcel "R" in Block 7, of TAMARAC LAKES NORTH, according to the Plat thereof, recorded in Plat Book 61, Page 7, of the Public Records of Broward County, Florida.

TLS:

Parcel "G" in Block 15, Parcel "R" in Block 17, and Parcel "P", of TAMARAC LAKES SOUTH, according to the Plat thereof, recorded in Plat Book 62, Page 24, of the Public Records of Broward County, Florida.

WHEREAS, title to the Properties is currently held by TE, as although Deeds were recorded transferring such title to THE CITY and the third property to TLS, it is not clear that such Deeds are legal and enforceable;

WHEREAS, an Indenture of Mortgage ("Mortgage") from TE. ("Mortgage"), which was recorded in Official Records Book 3564, Page 828 of the Public Records of Broward County, Florida, was executed and recorded to secure the repayment of the Bonds, held in trust by trustee, Boulevard Bank of Miami, with Bank of America, N.A., as the current successor in interest as trustee ("Trustee");

WHEREAS, the CITY has agreed to execute Deeds to the Properties to the respective Communities, contingent upon the performance by the Parties of the other terms agreed to herein, subject to CITY Commission approval;

And

WHEREAS, the Parties have agreed to execute any documentation necessary to retire the Utilities and Recreation Bonds, and relinquish any interest TBF, TE, and the CITY may have in the Recreation Leases as well as the title to the three Properties, upon CITY Commission approval of the transfer of title to the Properties to the Communities, relinquishing any interests in the Recreation Leases, and the execution of all documents necessary to effect same, as well as securing a Release of the Indenture of Mortgage.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants, promises and conditions herein contained, the Parties agree as follows:

1. **Settlement Amount and Payments.**

A lump sum payments shall be made to TE for the benefit of TBF in the total sum of two years (24 months) payments pursuant to the Recreation Leases set forth in the Deed Restrictions. The total amounts to be paid upon such agreement are: \$59,280.00 (\$10.00/mo per 247 lots) for TEMS, \$53,520.00 (\$10.00/mo per 223 lots) for TLN, and \$83,304.00 (\$13.00/mo per 267 lots) for TLS. Payment by all three Communities in the total sum of \$196,104.00 shall be paid in exchange for the Deeds to the Properties, Assignment of the Recreation Leases and Release of Mortgage, and related documents as set forth herein.

2. **Retirement of the Bonds.**

TBF shall surrender and retire the Bonds, marked on their face "Paid in Full", in consideration for the payments set forth in Section 1 herein above. TBF shall also execute a Satisfaction of Indenture of Mortgage in the form attached hereto as Exhibit "A".

3. **Transfer of Title.**

The City and TE shall each execute separate Deeds for each of the three Properties to the respective Communities. TE shall sign a no lien Affidavit only as to any liens that may have resulted from conduct of TE. Otherwise, the communities shall accept title, as is. The form of the Deeds are set forth as Exhibit "B" hereto and the No Lien Affidavit to be executed by TE is set forth as Exhibit "C" hereto and Corporate Resolutions and Certificate of Incumbancy by TE in the form set forth as Exhibit "D" hereto. A copy of the Articles of Incorporation of TE and an Affidavit that such copy is a true copy and that the corporation has not been dissolved shall be provided. A current Certificate of Status from the Secretary of State evidencing TE is active and current must also be secured.

4 **Assignment of Recreation Leases.**

The City, TBF and TE release any interest they may have had pursuant to the Recreation Leases and TE hereby shall execute an Assignment of Recreation Lease to each of the Communities respectively, in the form set forth as Exhibit "E" hereto. Along with the Assignment of the Recreation Leases, TE shall provide an updated receivables list to TEMS and TLN for their respective Recreation Leases.

5. **Release of Indenture of Mortgage.**

The executed and recorded to secure the repayment of the Bonds, shall be released upon the execution of a Release of Mortgage by the Trustee, in the form attached hereto as Exhibit "F" hereto;

6. **City Resolution.**

The City shall place the approval of this Agreement and the execution of the Deeds attached hereto in Exhibit "B" and the Release attached hereto as Exhibit "G" on the soonest possible City Commission Meeting Agenda, and upon such approval, adopt a Resolution approving and effecting same.

7. **Effective Date.**

This Agreement shall take effect upon the execution of this Agreement by the Parties and the approval of such Agreement by the City Commission. The Parties shall proceed to close upon the terms set forth in Sections 1 through 5 set forth herein within thirty (30) days after such City Commission approval is secured and all Parties have executed this Agreement.

8. **Mutual Release.**

In consideration for and upon the performance of all of the terms set forth in this Agreement, the Parties shall execute a Mutual Release in the form attached hereto as Exhibit "G".

9. **Cooperation.**

The Parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the Parties hereto.

10. **Entire Agreement; Modification.**

(a) This Agreement sets forth the entire understanding of the Parties and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance. The Parties understand and agree that this Agreement is purely voluntary and was prepared for the mutual benefit of the parties. None of the Parties shall be considered to be a unilateral or singular drafter of this Agreement. The Parties represent that they had the opportunity to have their respective legal counsel review, comment on, modify and approve this Agreement. The Parties understand and agree that this Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be construed strictly for or against any of the Parties.

(b) This Agreement may not be amended or modified except by written instrument signed by all of the Parties hereto, and the Parties agree that this provision may not be waived except in writing.

11. **Waiver.**

The rights of the Parties under this Agreement are to be considered cumulative, and the failure on the part of any Party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered a waiver by such Party of any other

covenant or condition herein. The waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required at a later time.

12. **Miscellaneous.**

(a) **Headings.** The headings used in this Agreement are for the convenience of the Parties and reference only and in no way define, describe, extend, or limit the scope of this Agreement or the intent of any provision in it.

(b) **Benefit and Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The individuals signing below on behalf of each Party represent and warrant that they have the full authority to bind their respective entities to all of the provisions hereof. Signatures by facsimile transmission or other electronic transmission of this Agreement shall be acceptable and binding upon the Parties. A copy hereof shall be as binding as an executed original.

(c) **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of law.

(d) **Attorneys' Fees.** In any litigation arising out of or relating to this Agreement, or to the interpretation or enforcement hereof, the prevailing party shall be entitled to recover the prevailing party's reasonable attorneys' fees and costs from the non-prevailing party at the trial and at all appellate levels.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year of the execution by all parties hereto.

THE BEHRING FOUNDATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_,



for The Behring Foundation a not-for-profit entity, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

TAMARAC ENTERPRISES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_, for Tamarac Enterprises, Inc., a Florida not-for-profit corporation, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

TEMS ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_, for TEMS Association, Inc., a Florida not-for-profit corporation, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

TAMARAC LAKES NORTH ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_, for Tamarac Lakes North Association, Inc., a Florida not-for-profit corporation, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

TAMARAC LAKES SOUTH CIVIC ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )

)ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_,  
for Tamarac Lakes South Civic Association, Inc., a Florida not-for-profit corporation, on behalf  
of itself and its members, who is either personally known to me or who has produced the  
following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

THE CITY OF TAMARAC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_,  
for the City of Tamarac, on behalf of itself and its members, who is either personally known to  
me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

**SATISFACTION OF INDENTURE OF MORTGAGE**

This document is signed by \_\_\_\_\_, as \_\_\_\_\_ of The Behring Foundation, as bondholder ("Bondholder"), who is the owner and holder of, and has not transferred, assigned, pledged, or otherwise encumbered any interest in, the Bonds secured by the following described Indenture of Mortgage ("Mortgage"):

Indenture of Mortgage by Tamarac Enterprises to secure the Utilities and Recreation Bonds, Series A, of TE, was issued in the original total amount of \$1,750,000.00, which was originally recorded in Official Records Book 3564, Page 828 of the Public Records of Broward County, Florida, and revised by the Second Supplemental Trust Indenture recorded in Official Records Book 3564, Page 925 of the Public Records of Broward County, Florida, on December 28, 1967, encumbering certain property situated in Broward County, Florida, as more particularly described therein and also attached hereto as Exhibit "A" ("the Property"); and That The Behring Foundation, as Bondholder, acknowledges full payment and satisfaction of the Bonds and the Indenture of Mortgage, does surrender the Bonds and Indenture of Mortgage as canceled as attached hereto as Exhibit "B", releases the Property from the lien of the Indenture of Mortgage, and directs the Clerk of the Circuit Court in and for Broward County to cancel the same of record.

IN WITNESS, the Mortgagee has executed these presents on \_\_\_\_\_, 20\_\_\_\_.

WITNESSES:

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

Before me the undersigned authority, personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me or who has provided identification as set forth below, as \_\_\_\_\_, for \_\_\_\_\_, on this date, executed the foregoing Satisfaction of Indenture of Mortgage under authority vested in such individual by said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF FLORIDA AT LARGE  
(SEAL)

My Commission Expires:

Personally known \_\_\_\_\_

Produced ID \_\_\_\_\_

Type of Identification \_\_\_\_\_

## **EXHIBIT "A"**

### **TEMS Association, Inc:**

All that part of the E ½ of the West ½ of the SE ¼ of the SW ¼ and the E ½ of the SE ¼ of the SW ¼ of Section 16, Township 49 South, Range 42 East, Broward County, Florida, lying North of the North right-of-way line of Prospect Field Road; less the East 890 feet thereof and less the following described part thereof: Beginning at the Southwest corner of the lands platted on Block 7, Tamarac Lakes, according to the Plat thereof, recorded in Plat Book 58, Page 40, of the Public Records of Broward County, Florida; thence N 77 degrees 39' 11" W, along the said North right-of-way line of Prospect Field Road, 19.03 feet to a point; thence N 12 degrees 20' 49" E, 72 feet to a point; thence S 77 degrees 39' 11" E, 1.51 feet to the Northwest corner of Lot 10, Block 7, of said Tamarac Lakes, thence S 12 degrees 20' 49" West, along the West line of said Lot 10, Block 7, of said Tamarac Lakes, 74.10 feet to the Point of Beginning.

### **Tamarac Lakes North Association, Inc.:**

Parcel "R" in Block 7, of TAMARAC LAKES NORTH, according to the Plat thereof, recorded in Plat Book 61, Page 7, of the Public Records of Broward County, Florida.

### **Tamarac Lakes South Civic Association, Inc.:**

Parcel "G" in Block 15, Parcel "R" in Block 17, and Parcel "P", of TAMARAC LAKES SOUTH, according to the Plat thereof, recorded in Plat Book 62, Page 24, of the Public Records of Broward County, Florida.

TAX ID#: 4942 17 04 2690  
Prepared by/Record and return to:  
Beth Lindie, Esquire  
ESLER & LINDIE, P.A.  
400 S.E. 6th Street  
Fort Lauderdale, FL 33301

## QUIT-CLAIM DEED

**THIS INDENTURE** is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between, City of Tamarac, a Municipal Corporation of the State of Florida, whose mailing address is 7525 NW 88<sup>th</sup> Avenue, Tamarac, Florida, 33321, grantor\*, and Tamarac Lakes South Civic Association, Inc., a Florida non-profit corporation, whose address is 2800 W. Commercial Blvd., Tamarac, Florida, 33309, grantee\*,

**WITNESSETH** that said grantor, for and in consideration of the sum of TEN and No/100 (\$10.00) Dollars and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, and as approved by the City Commission as set forth in the Resolution attached hereto as Exhibit "A", has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Broward County, Florida, to-wit:

**Parcel "G" in Block 15, Parcel "R" in Block 17, and Parcel "P", TAMARAC LAKES SOUTH, according to the Plat thereof, recorded in Plat Book 62, Page 24, of the Public Records of Broward County, Florida.**

Together with all buildings, structures and recreational facilities thereon, and together with all appurtenances, with every privilege, right, title, interest, estate and claim thereto of grantor.

**IN WITNESS WHEREOF**, grantor has executed this deed on the day and year first above written.

Signed, sealed and delivered in our presence:

SIGN NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

SIGN NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

MAYOR

CITY OF TAMARAC

ATTEST:

\_\_\_\_\_  
CITY CLERK

STATE OF FLORIDA

COUNTY OF BROWARD, ss:

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Mayor of the City of Tamarac, who is/are personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

TAX ID#: 4942 16 00 0050  
Prepared by/Record and return to:  
Beth Lindie, Esquire  
ESLER & LINDIE, P.A.  
400 S.E. 6th Street  
Fort Lauderdale, FL 33301

## SPECIAL WARRANTY DEED

**THIS INDENTURE** is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between, City of Tamarac, a Municipal Corporation of the State of Florida, whose mailing address is 7525 NW 88<sup>th</sup> Avenue, Tamarac, Florida, 33321, grantor\*, and TEMS Association, Inc., a Florida non-profit corporation, whose address is 1751 NW 45th Court, Tamarac, Florida, 33309, grantee\*,

**WITNESSETH** that said grantor, for and in consideration of the sum of TEN and No/100 (\$10.00) Dollars and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, and as approved by the City Commission as set forth in the Resolution attached hereto as Exhibit "A", has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Broward County, Florida, to-wit:

**All that part of the E ½ of the West ½ of the SE ¼ of the SW ¼ and the E ½ of the SE ¼ of the SW ¼ of Section 16, Township 49 South, Range 42 East, Broward County, Florida, lying North of the North right-of-way line of Prospect Field Road; less the East 890 feet thereof and less the following described part thereof: Beginning at the Southwest corner of the lands platted on Block 7, Tamarac Lakes, according to the Plat thereof, recorded in Plat Book 58, Page 40, of the Public Records of Broward County, Florida; thence N 77 degrees 39' 11" W, along the said North right-of-way line of Prospect Field Road, 19.03 feet to a point; thence N 12 degrees 20' 49" E, 72 feet to a point; thence S 77 degrees 39' 11" E, 1.51 feet to the Northwest corner of Lot 10, Block 7, of said Tamarac Lakes, thence S 12 degrees 20' 49" West, along the West line of said Lot 10, Block 7, of said Tamarac Lakes, 74.10 feet to the Point of Beginning.**

Together with all buildings, structures and recreational facilities thereon, and together with all appurtenances, with every privilege, right, title, interest, estate and claim thereto of grantor.

Subject to the certain Lease between Kenneth E. Behring and Patricia R. Behring, Lessors, and Tamarac Lakes, Inc., Lessee, recorded at Official Records Book 2779, Page 97, and rerecorded in Official Records Book 3564, Page 827, of the Public Records of Broward County, Florida.

Grantor warrants that the premises are free from all encumbrances made by grantor will defend the property conveyed against the lawful claims and demands of all persons claiming by, through, or under them, but against none other.

**IN WITNESS WHEREOF**, grantor has executed this deed on the day and year first above written. Signed, sealed and delivered in our presence:

SIGN NAME: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

SIGN NAME: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD, ss:

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
MAYOR,  
CITY OF TAMARAC

ATTEST:

\_\_\_\_\_  
CITY CLERK

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_,

as Mayor of the City of Tamarac, who is/are personally known to me or has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



TAX ID#: 4942 17 02 1110  
Prepared by/Record and return to:  
Beth Lindie, Esquire  
ESLER & LINDIE, P.A.  
400 S.E. 6th Street  
Fort Lauderdale, FL 33301

## SPECIAL WARRANTY DEED

**THIS INDENTURE** is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between, City of Tamarac, a Municipal Corporation of the State of Florida, whose mailing address is 7525 NW 88<sup>th</sup> Avenue, Tamarac, Florida, 33321, grantor\*, and Tamarac Lakes North Association, Inc., a Florida non-profit corporation, whose address is 2600 NW 53 Street, Tamarac, Florida, 33309, grantee\*,

**WITNESSETH** that said grantor, for and in consideration of the sum of TEN and No/100 (\$10.00) Dollars and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, and as approved by the City Commission as set forth in the Resolution attached hereto as Exhibit "A", has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Broward County, Florida, to-wit:

**Parcel "R" in Block 7 of TAMARAC LAKES NORTH, according to the Plat thereof, recorded in Plat Book 61, Page 7, of the Public Records of Broward County, Florida.**

Together with all buildings, structures and recreational facilities thereon, and together with all appurtenances, with every privilege, right, title, interest, estate and claim thereto of grantor.

Subject to the certain Lease between Kenneth E. Behring and Patricia R. Behring, Lessors, and Tamarac Lakes, Inc., Lessee, recorded at Official Records Book 3049, Page 392, and rerecorded in Official Records Book 3064, Page 834, of the Public Records of Broward County, Florida.

Grantor warrants that the premises are free from all encumbrances made by grantor will defend the property conveyed against the lawful claims and demands of all persons claiming by, through, or under them, but against none other.

**IN WITNESS WHEREOF**, grantor has executed this deed on the day and year first above written.  
Signed, sealed and delivered in our  
presence:

SIGN NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

SIGN NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

MAYOR,  
CITY OF TAMARAC

ATTEST:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, ss:

\_\_\_\_\_  
CITY CLERK

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_,  
as Mayor of the City of Tamarac, who is/are personally known to me or has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

**OWNER'S AFFIDAVIT**

STATE OF FLORIDA                    )  
COUNTY OF BROWARD    ) ss:

**BEFORE ME**, the undersigned authority, this day personally appeared the undersigned Affiants, (hereinafter referred to singularly or collectively as "Affiant") who being by me first duly sworn, deposes and says:

1.       That Affiant is the \_\_\_\_\_ of Tamarac Enterprises, Inc., the title holder ("Owner") of the following described property situate, lying and being in Broward County, Florida, to-wit:

**TEMS:**

All that part of the E ½ of the West ½ of the SE ¼ of the SW ¼ and the E ½ of the SE ¼ of the SW ¼ of Section 16, Township 49 South, Range 42 East, Broward County, Florida, lying North of the North right-of-way line of Prospect Field Road; less the East 890 feet thereof and less the following described part thereof: Beginning at the Southwest corner of the lands platted on Block 7, Tamarac Lakes, according to the Plat thereof, recorded in Plat Book 58, Page 40, of the Public Records of Broward County, Florida; thence N 77 degrees 39' 11" W, along the said North right-of-way line of Prospect Field Road, 19.03 feet to a point; thence N 12 degrees 20' 49" E, 72 feet to a point; thence S 77 degrees 39' 11" E, 1.51 feet to the Northwest corner of Lot 10, Block 7, of said Tamarac Lakes, thence S 12 degrees 20' 49" West, along the West line of said Lot 10, Block 7, of said Tamarac Lakes, 74.10 feet to the Point of Beginning.

**TLN:**

Parcel "R" in Block 7, of TAMARAC LAKES NORTH, according to the Plat thereof, recorded in Plat Book 61, Page 7, of the Public Records of Broward County, Florida.

**TLS:**

Parcel "G" in Block 15, Parcel "R" in Block 17, and Parcel "P", of TAMARAC LAKES SOUTH, according to the Plat thereof, recorded in Plat Book 62, Page 24, of the Public Records of Broward County, Florida.

2.       That Owner has not caused any Mechanics' Liens under Chapter 713 of the Florida Statutes have been filed against the above described property; that Owner has not caused any repairs, improvements, or other work done to or labor, materials or services bestowed upon the above described property or any portion thereof, for which any or all of the cost of same remains unpaid; that no person, firm or corporation claiming by, through or under Owner, is entitled to a lien under Chapter 713 of the Florida Statutes.

**FURTHER AFFIANT SAYETH NAUGHT.**

Tamarac Enterprises, Inc.

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of and for Tamarac Enterprises, Inc., who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

CERTIFIED COPY OF CORPORATE RESOLUTIONS AND  
CERTIFICATE OF INCUMBENCY OF  
TAMARC ENTERPRISES, INC.

The undersigned officer of TAMARAC ENTERPRISES, INC. hereby certifies that the following revised resolutions have been adopted by the Board of Directors at a meeting of the Board held on \_\_\_\_\_, 20\_\_:

RESOLVED, that Tamarac Enterprises, Inc. and \_\_\_\_\_, as its \_\_\_\_\_, are authorized to execute the AGREEMENT TO ASSIGN RECREATION LEASES, RETIRE UTILITIES AND RECREATION BONDS AND TRANSFER TITLE TO PROPERTY, to assign the Recreation Leases and transfer properties to the respective communities as set forth therein;

FURTHER RESOLVED, that the following authorized parties have been duly elected and appointed to and qualified as Board Members and Officers of Tamarac Enterprises, Inc., holding the office set forth opposite each of their respective names herein, and they are the incumbents of such offices, empowered to act pursuant to the Resolutions herein until such time as their successors may be duly elected or appointed and qualified, and that the authentic signature of each such officer appears opposite his or her name:

Office	Name	Signature

FURTHER RESOLVED, that the signature of any of the above shall be required, and such officer is hereby authorized and directed to execute all documents necessary on behalf of the corporation to effect the purpose of these Resolutions, including but not limited to (i) the Deed, (ii) Limited No-Lien Affidavit; and (iii) any other documents deemed necessary, appropriate or advisable by such authorized officer to execute any ancillary documents to effect the foregoing Assignment of Recreation Leases and transfer of Property.

IT IS HEREBY CERTIFIED that the foregoing Resolutions have been duly adopted at a meeting of the Board of Directors, which meeting was called for such specific purpose and held in accordance with the current By-Laws and Articles of Incorporation and in accordance with the laws of the State of Florida. It is further certified that the Board of Directors and its Officers have full power and authority to bind the corporation in accordance herewith and that the foregoing Resolutions are in full force and effect as of this date and that the foregoing Resolutions have not been altered, amended, modified or rescinded and, furthermore, the same shall be true, valid and binding at and after the closing.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

TAMARAC ENTERPRISES, INC.

By: \_\_\_\_\_ Attest: \_\_\_\_\_  
Print: \_\_\_\_\_, Title: \_\_\_\_\_ Print: \_\_\_\_\_, Title: \_\_\_\_\_

## **ASSIGNMENT OF RECREATION LEASE**

This Assignment of Recreation Lease Agreement ("Assignment Agreement") is made and entered on \_\_\_\_\_, 201\_\_\_\_, by and between TAMARAC ENTERPRISES, INC. ("Assignor"), and TEMS ASSOCIATION, INC., ("Assignee").

### **RECITALS**

A. Assignor is the owner of certain real property described as:

All that part of the E ½ of the West ½ of the SE ¼ of the SW ¼ and the E ½ of the SE ¼ of the SW ¼ of Section 16, Township 49 South, Range 42 East, Broward County, Florida, lying North of the North right-of-way line of Prospect Field Road; less the East 890 feet thereof and less the following described part thereof: Beginning at the Southwest corner of the lands platted on Block 7, Tamarac Lakes, according to the Plat thereof, recorded in Plat Book 58, Page 40, of the Public Records of Broward County, Florida; thence N 77 degrees 39' 11" W, along the said North right-of-way line of Prospect Field Road, 19.03 feet to a point; thence N 12 degrees 20' 49" E, 72 feet to a point; thence S 77 degrees 39' 11" E, 1.51 feet to the Northwest corner of Lot 10, Block 7, of said Tamarac Lakes, thence S 12 degrees 20' 49" West, along the West line of said Lot 10, Block 7, of said Tamarac Lakes, 74.10 feet to the Point of Beginning.

("the Property").

B. Assignor has entered into a Recreation Lease upon the Property, as recorded in the Public Records of Broward County, Florida at Official Records Book 2779, Page 97 and set forth in the Deed Restriction recorded in the Public Records of Broward County, Florida, at Official Records Book 2765, Page 450.

C. Assignor has entered into an Agreement under which Assignor has agreed to sell and Assignee has agreed to purchase the Property and the Recreation Lease.

D. Assignor desires to assign Assignor's entire right, title and interest in, to, and under the Recreation Lease to Assignee, and Assignee desires to accept said assignment, as provided below.

### **TERMS AND CONDITIONS**

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Assignment of Leases. Assignor assigns to Assignee all of Assignor's rights, title, and interest in, to, and under the Recreation Lease (the "Lease"), together with any and all rights, title, estates, and interests of Assignor as lessor thereunder, including the rights to all rents, claims, causes of action, proceeds, and all other income and benefits derived from the Recreation Lease.

2. Assignee accepts the foregoing assignment and agrees to assume and perform all of the agreements and obligations of Assignor under the Recreation Lease, and agrees to be bound by all the terms and conditions of the Recreation Lease.

3. Assignor agrees to execute and deliver to Assignee or its successors and assigns all documents and take such further acts that Assignee may reasonably request to fully evidence the assignment contained in this Assignment Agreement and to enable Assignee or its successors and assigns to fully realize and enjoy the rights and interests assigned here.

4. Assignor represents that it has not heretofore transferred, sold, conveyed, assigned or otherwise disposed of its interest in and to the Recreation Lease to any other party.

5. Indemnification. Assignee agrees to indemnify, protect, defend, and hold Assignor harmless from and against any all claims, demands, liabilities, losses, costs, damages, or expenses (including reasonable attorney's fees and costs) arising out of or resulting from any breach or default by Assignee under the terms of the Leases arising on or after the date of this Assignment Agreement.

6. Effect of Assignment. All other terms and conditions of the Recreation Lease are to remain unchanged and will continue in full force and effect.

7. Binding Effect. The provisions of this Assignment Agreement are contingent upon the closing of the transactions set forth in the Agreement between the parties and thereafter, will be binding upon and inure to the benefit of the respective successors and assigns of Assignor and Assignee.

8. Governing Law. This Assignment Agreement will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to principles of conflicts of law.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement as of the day and year first set forth above.

ASSIGNEE:

Tamarac Enterprises, Inc

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNOR:

TEMS Association, Inc.

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

## **ASSIGNMENT OF RECREATION LEASE**

This Assignment of Recreation Lease Agreement ("Assignment Agreement") is made and entered on \_\_\_\_\_, 201 \_\_\_\_, by and between TAMARAC ENTERPRISES, INC. ("Assignor"), and TAMARAC LAKES NORTH ASSOCIATION, INC., ("Assignee").

### **RECITALS**

A. Assignor is the owner of certain real property described as:

Parcel "R" in Block 7, of TAMARAC LAKES NORTH, according to the Plat thereof, recorded in Plat Book 61, Page 7, of the Public Records of Broward County, Florida.

("the Property").

B. Assignor has entered into a Recreation Lease upon the Property, as recorded in the Public Records of Broward County, Florida at Official Records Book Official Records Book 3049, Page 392 (rerecorded in Official Records Book 3064, Page 834) and set forth in the Deed Restriction recorded in the Public Records of Broward County, Florida, at Official Records Book 3049, Page 384 (rerecorded at Official Records Book 3064, Page 826).

C. Assignor has entered into an Agreement under which Assignor has agreed to sell and Assignee has agreed to purchase the Property and the Recreation Lease.

D. Assignor desires to assign Assignor's entire right, title and interest in, to, and under the Recreation Lease to Assignee, and Assignee desires to accept said assignment, as provided below.

### **TERMS AND CONDITIONS**

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Assignment of Leases. Assignor assigns to Assignee all of Assignor's rights, title, and interest in, to, and under the Recreation Lease (the "Lease"), together with any and all rights, title, estates, and interests of Assignor as lessor thereunder, including the rights to all rents, claims, causes of action, proceeds, and all other income and benefits derived from the Recreation Lease.
2. Assignee accepts the foregoing assignment and agrees to assume and perform all of the agreements and obligations of Assignor under the Recreation Lease, and agrees to be bound by all the terms and conditions of the Recreation Lease.
3. Assignor agrees to execute and deliver to Assignee or its successors and assigns all documents and take such further acts that Assignee may reasonably request to fully evidence the assignment contained in this Assignment Agreement and to enable Assignee or its successors and assigns to fully realize and enjoy the rights and interests assigned here.

4. Assignor represents that it has not heretofore transferred, sold, conveyed, assigned or otherwise disposed of its interest in and to the Recreation Lease to any other party.

5. Indemnification. Assignee agrees to indemnify, protect, defend, and hold Assignor harmless from and against any all claims, demands, liabilities, losses, costs, damages, or expenses (including reasonable attorney's fees and costs) arising out of or resulting from any breach or default by Assignee under the terms of the Leases arising on or after the date of this Assignment Agreement.

6. Effect of Assignment. All other terms and conditions of the Recreation Lease are to remain unchanged and will continue in full force and effect.

7. Binding Effect. The provisions of this Assignment Agreement are contingent upon the closing of the transactions set forth in the Agreement between the parties and thereafter, will be binding upon and inure to the benefit of the respective successors and assigns of Assignor and Assignee.

8. Governing Law. This Assignment Agreement will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to principles of conflicts of law.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement as of the day and year first set forth above.

ASSIGNEE:

Tamarac Enterprises, Inc

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNOR:

Tamarac Lakes North Association, Inc.

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

## **ASSIGNMENT OF RECREATION LEASE**

This Assignment of Recreation Lease Agreement ("Assignment Agreement") is made and entered on \_\_\_\_\_, 201 \_\_\_\_, by and between TAMARAC ENTERPRISES, INC. ("Assignor"), and TAMARAC LAKES SOUTH CIVIC ASSOCIATION, INC., ("Assignee").

### **RECITALS**

A. Assignor is the owner of certain real property described as:

Parcel "G" in Block 15, Parcel "R" in Block 17, and Parcel "P", of TAMARAC LAKES SOUTH, according to the Plat thereof, recorded in Plat Book 62, Page 24, of the Public Records of Broward County, Florida.

("the Property").

B. Assignor has entered into a Recreation Lease upon the Property, as recorded in the Public Records of Broward County, Florida at Official Records Book 3264, Page 507 and set forth in the Deed Restriction recorded in the Public Records of Broward County, Florida, at Official Records Book 3264, Page 499.

C. Assignor has entered into an Agreement under which Assignor has agreed to sell and Assignee has agreed to purchase the Property and the Recreation Lease.

D. Assignor desires to assign Assignor's entire right, title and interest in, to, and under the Recreation Lease to Assignee, and Assignee desires to accept said assignment, as provided below.

### **TERMS AND CONDITIONS**

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Assignment of Leases. Assignor assigns to Assignee all of Assignor's rights, title, and interest in, to, and under the Recreation Lease (the "Lease"), together with any and all rights, title, estates, and interests of Assignor as lessor thereunder, including the rights to all rents, claims, causes of action, proceeds, and all other income and benefits derived from the Recreation Lease.
2. Assignee accepts the foregoing assignment and agrees to assume and perform all of the agreements and obligations of Assignor under the Recreation Lease, and agrees to be bound by all the terms and conditions of the Recreation Lease.
3. Assignor agrees to execute and deliver to Assignee or its successors and assigns all documents and take such further acts that Assignee may reasonably request to fully evidence the assignment



contained in this Assignment Agreement and to enable Assignee or its successors and assigns to fully realize and enjoy the rights and interests assigned here.

4. Assignor represents that it has not heretofore transferred, sold, conveyed, assigned or otherwise disposed of its interest in and to the Recreation Lease to any other party.

5. Indemnification. Assignee agrees to indemnify, protect, defend, and hold Assignor harmless from and against any all claims, demands, liabilities, losses, costs, damages, or expenses (including reasonable attorney's fees and costs) arising out of or resulting from any breach or default by Assignee under the terms of the Leases arising on or after the date of this Assignment Agreement.

6. Effect of Assignment. All other terms and conditions of the Recreation Lease are to remain unchanged and will continue in full force and effect.

7. Binding Effect. The provisions of this Assignment Agreement are contingent upon the closing of the transactions set forth in the Agreement between the parties and thereafter, will be binding upon and inure to the benefit of the respective successors and assigns of Assignor and Assignee.

8. Governing Law. This Assignment Agreement will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to principles of conflicts of law.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement as of the day and year first set forth above.

ASSIGNEE:

Tamarac Enterprises, Inc

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

ASSIGNOR:

Tamarac Lakes South Civic Association,  
Inc.

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Document Prepared By:  
 VNORCOTT  
 ReconTrust Company, N.A.  
 4161 Piedmont Parkway  
 Mail Stop: NC4-109-01-32  
 Greensboro, N.C. 27410  
 (800) 540-2684

When recorded return to:  
 ATT: ALICE  
 400 SOUTH EAST 6TH ST  
 FORT LAUDERDALE FL 33301

UID:  
 DOCID\_000120867892005N

### SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: Bank of America, N.A. as successor in interest by merger of NationsBank, N.A. f/k/a NationsBank of Florida, N.A. f/k/a NCNB National Bank of Florida successor by merger to Pan American Bank successor by merger to National Bank of Florida formerly known as Boulevard National Bank of Miami the Mortgagee of a certain mortgage deed executed by TAMARAC ENTERPRISES, INC. to BOULEVARD NATIONAL BANK OF MIAMI bearing date 01/03/1987, recorded on NA In Official Records Book 3564, Page 837, Instrument # NA in the office of the Clerk of the Circuit Court of BROWARD County State of Florida, in the principal sum of \$5,000.00 Dollars, upon that certain property situated in said State and County hereby acknowledges full payment and satisfaction of said mortgage, and surrenders the same as canceled, and hereby directs the Clerk of the said Circuit Court to cancel the same of record.

(CORPORATE SEAL)



IN WITNESS WHEREOF the said Corporation has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the 12/19/12

ATTEST: [Signature]  
 LOUIS RAMOS

Signed and delivered in the presence of:

Chiara Shipp  
 CHIARA SHIPP  
 Witness

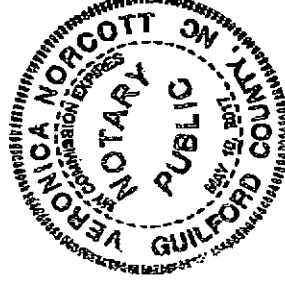
STATE OF NORTH CAROLINA  
 COUNTY OF GUILFORD

Bank of America, N.A. as successor in interest by merger of NationsBank, N.A. f/k/a NationsBank of Florida, N.A. f/k/a NCNB National Bank of Florida successor by merger to Pan American Bank successor by merger to National Bank of Florida formerly known as Boulevard National Bank of Miami

By [Signature]  
 LOUVENIA PENN  
 ASSISTANT VICE PRESIDENT

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: LOUVENIA PENN, ASSISTANT VICE PRESIDENT of Bank of America, N.A. as successor in interest by merger of NationsBank, N.A. f/k/a NationsBank of Florida, N.A. f/k/a NCNB National Bank of Florida successor by merger to Pan American Bank successor by merger to National Bank of Florida formerly known as Boulevard National Bank of Miami.

Date: 12-19-12  
Veronica Norcott  
 Notary Public



## MUTUAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the sum of Ten Dollars and no/100 (\$10.00) Dollars, receipt of which is hereby acknowledged, for themselves and, their officers, directors, managers, members, agents, employees, representatives, insurers, assigns and successors hereby remise, release, acquit, satisfy, and forever discharge each other, of and from any, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which each other ever had, now has, or which any personal representative, successor, heir or assign of said each party hereafter can, shall or may have, against the other parties, including their officers, directors, managers, members, agents, employees and representatives for, upon or by reason of any matter, cause or thing whatsoever arising out of, related to or in connection with the Properties, the Recreation Leases and the Bonds, described in detail below from the beginning of the world to the day of these presents:

The Recreation Leases are recorded in the Public Records of Broward County, Florida at Official Records Book 2779, Page 97, Official Records Book 3049, Page 392 (rerecorded in Official Records Book 3064, Page 834, and Official Records Book 3264, Page 507, assigned per the Assignments recorded in Official Records Book 3564, Page 827, and previously, per the Assignments recorded in Official Records Book 2790, Page 702 and Official Records Book 3053, Page 192 of the Public Records of Broward County, Florida. The Original Deed Restrictions are recorded in the Public Records of Broward County, Florida, at Official Records Book 2765, Page 450, Official Records Book 3049, Page 384 (rerecorded at Official Records Book 3064, Page 826), and Official Records Book 3264, Page 499, as they may have been amended, respectively.

The properties are described as follows:

All that part of the E  $\frac{1}{2}$  of the West  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  and the E  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 16, Township 49 South, Range 42 East, Broward County, Florida, lying North of the North right-of-way line of Prospect Field Road; less the East 890 feet thereof and less the following described part thereof: Beginning at the Southwest corner of the lands platted on Block 7, Tamarac Lakes, according to the Plat thereof, recorded in Plat Book 58, Page 40, of the Public Records of Broward County, Florida; thence N 77 degrees 39' 11" W, along the said North right-of-way line of Prospect Field Road, 19.03 feet to a point; thence N 12 degrees 20' 49" E, 72 feet to a point; thence S 77 degrees 39' 11" E, 1.51 feet to the Northwest corner of Lot 10, Block 7, of said Tamarac Lakes, thence S 12 degrees 20' 49" West, along the West line of said Lot 10, Block 7, of said Tamarac Lakes, 74.10 feet to the Point of Beginning.

Parcel "R" in Block 7, of TAMARAC LAKES NORTH, according to the Plat thereof, recorded in Plat Book 61, Page 7, of the Public Records of Broward County, Florida.

Parcel "G" in Block 15, Parcel "R" in Block 17, and Parcel "P", of TAMARAC LAKES SOUTH, according to the Plat thereof, recorded in Plat Book 62, Page 24, of the Public Records of Broward County, Florida.

This Release shall be binding upon and inure to the benefit of each party hereto, the beneficiaries hereof and their respective successors, assigns and transferees.

The parties hereto declare that they have carefully read the foregoing Release, know its contents and have had the benefit of independent counsel in considering this Release, and that they are signing this Release as their own free act.

THE BEHRING FOUNDATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_, for The Behring Foundation a not-for-profit entity, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

TAMARAC ENTERPRISES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_, for Tamarac Enterprises, Inc., a Florida not-for-profit corporation, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

TEMS ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_, for TEMS Association, Inc., a Florida not-for-profit corporation, on behalf of itself and its members, who is either personally known to me or who has produced the following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

TAMARAC LAKES NORTH ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )

)ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_,  
for Tamarac Lakes North Association, Inc., a Florida not-for-profit corporation, on behalf of  
itself and its members, who is either personally known to me or who has produced the following  
identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

TAMARAC LAKES SOUTH CIVIC ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
)ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
201\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_,  
for Tamarac Lakes South Civic Association, Inc., a Florida not-for-profit corporation, on behalf  
of itself and its members, who is either personally known to me or who has produced the  
following identification:\_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

THE CITY OF TAMARAC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA     )  
  )ss:  
COUNTY OF BROWARD)

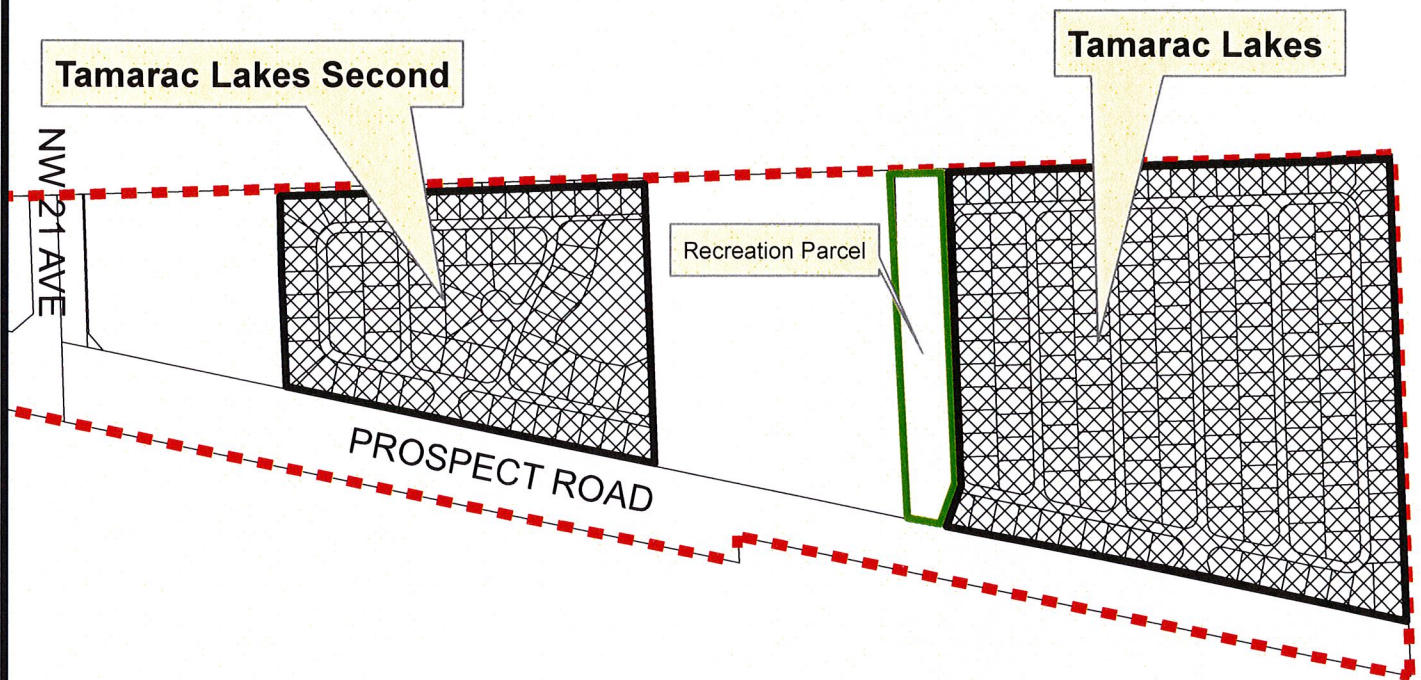
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_,  
for the City of Tamarac, on behalf of itself and its members, who is either personally known to  
me or who has produced the following identification: \_\_\_\_\_.

NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_

# Tamarac Lakes & Tamarac Lakes Second

City of Fort Lauderdale

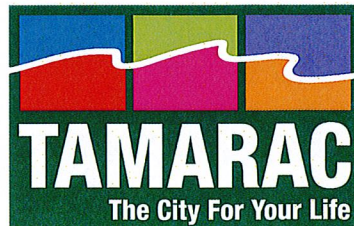


City of Oakland Park



Not to Scale

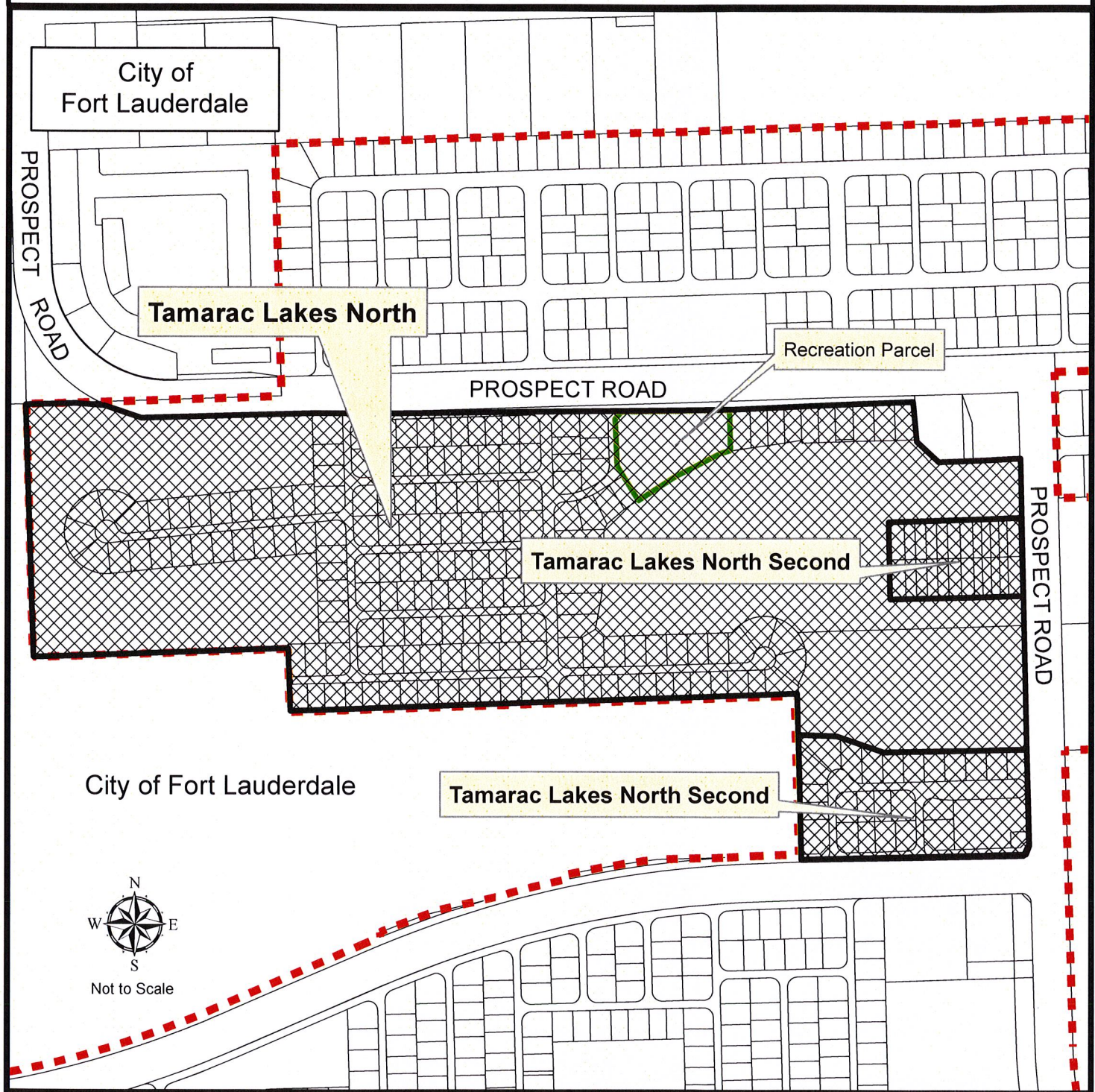
City Commission  
June 12, 2013



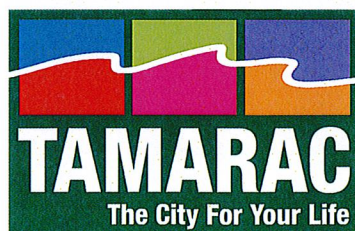
Jennifer Bramley, Director  
Community Development  
7525 NW 88 Avenue  
Tamarac, FL 33321  
Telephone (954) 597-3530



# Tamarac Lakes North & Tamarac Lakes North Second



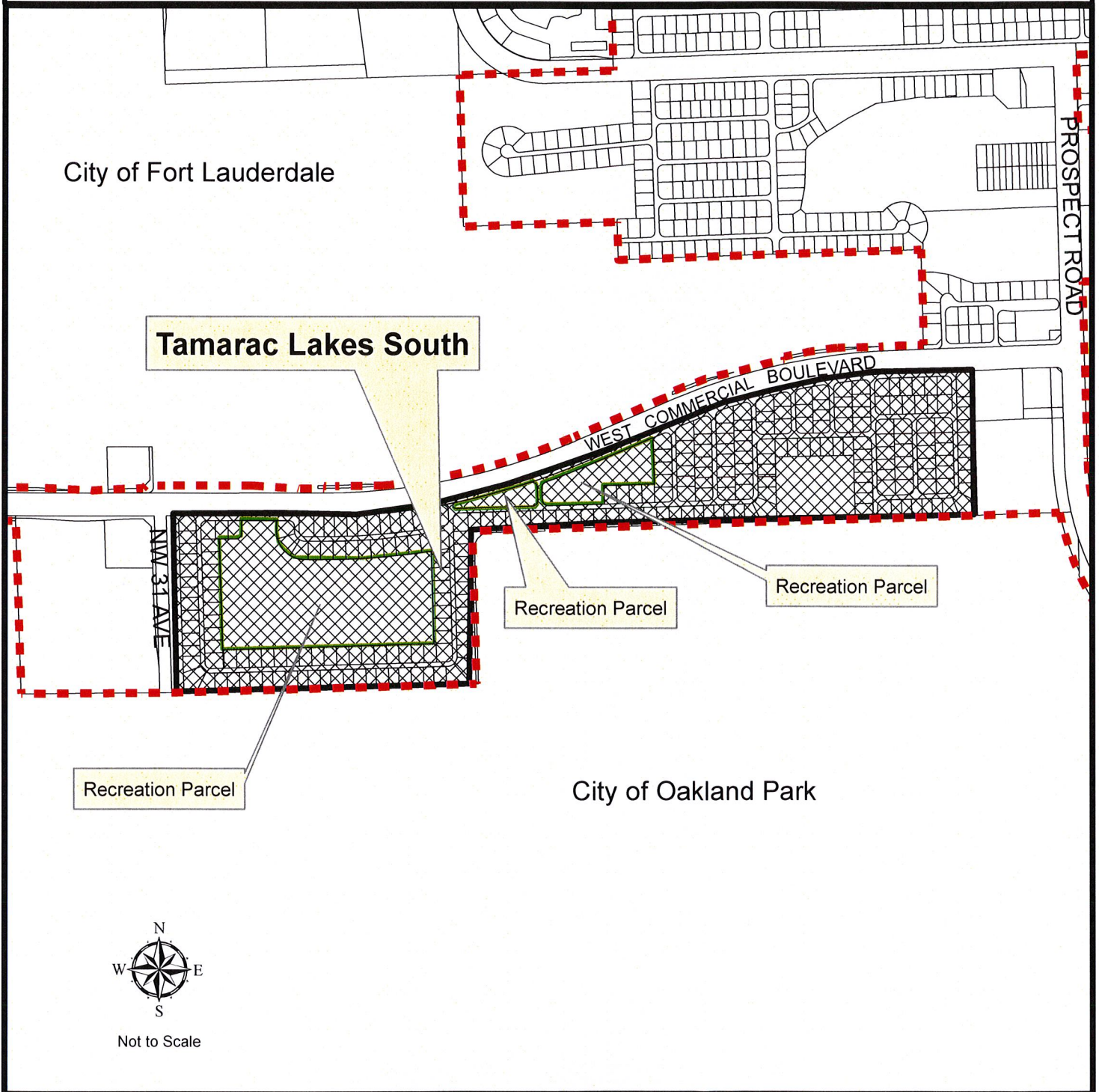
City Commission  
June 12, 2013



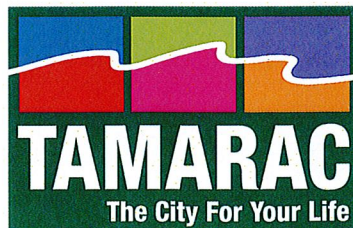
Jennifer Bramley, Director  
Community Development  
7525 NW 88 Avenue  
Tamarac, FL 33321  
Telephone (954) 597-3530



# Tamarac Lakes South



City Commission  
June 12, 2013



Jennifer Bramley, Director  
Community Development  
7525 NW 88 Avenue  
Tamarac, FL 33321  
Telephone (954) 597-3530



**Title - TR12352 - Resolution Approving the Award for RFP No. 13-11R to SAIC for Disaster Debris Monitoring Services**

Item No. 6 (e) on the Consent Agenda. (TR12352) A Resolution of the city Commission of the City of Tamarac, Florida, approving the award for RFP no. 13-11R to Science Applications International Corporation (SAIC) for Disaster Debris Monitoring Services; authorizing the appropriate City Officials to execute an Agreement with SAIC for Disaster Debris Monitoring Services; providing for conflicts, providing for severability; providing for an effective date. -

***Public Services Director Jack Strain***

**ATTACHMENTS:**

Name:

Description:

- 📎 [TR\\_12352\\_Signed\\_Memo.pdf](#)
- 📎 [TR\\_12352- RESO - Disaster Debris Monitoring R13-11R.doc](#)
- 📎 [EX\\_1\\_Evaluation\\_Tabulation.pdf](#)
- 📎 [EX\\_2\\_Agreement\\_TR\\_12352\\_SAIC\\_MONITOR\\_\(initialed\).pdf](#)


TR 12352 - MEMO  
TR 12352 Reso  
Ex 1 Evaluation Tabulation  
EX 2 - AGreement

**CITY OF TAMARAC  
INTEROFFICE MEMORANDUM  
PUBLIC SERVICES DEPARTMENT**

**TO: Mike C. Cernech, City Manager**

**DATE: June 7, 2013**

**THRU: Jack Strain, Public Services  
Director** 

**FROM: Troy Gies, Budget and Contracts  
Manager** 

**RE: Temp. Reso. #12352 – Award of  
RFP No. 13-10R for Disaster  
Debris Monitoring Services –  
City Commission Meeting of  
June 26, 2013**

---

**Recommendation:**

I recommend the award of RFP No. 13-11R for Disaster Debris Monitoring Services to, and execution of an Agreement with, Science Applications International Corporation (SAIC); and that this item be placed on the June 26, 2013 Commission Agenda.

**Issue:**

Award of RFP 13-11R and execution of an Agreement between the City of Tamarac and SAIC for Disaster Debris Monitoring Services.

**Background:**

The City of Tamarac Public Works Department is the lead agency responsible for providing emergency engineering/public works services in the event of a disaster. These services include the repair of public infrastructure and facilities, clearance of debris and restoration of critical public services.

Disaster debris monitoring following a debris generating event, such as a hurricane, is necessary to assure debris removal contractors operate in compliance with contracts and in accordance with state and federal reimbursement programs, including but not limited to FEMA, FHWA, and NCRS.

In order for the City of Tamarac to receive assistance for disaster debris removal from State and Federal Reimbursement programs (e.g. FEMA, FHWA) the City must implement a debris removal monitoring program. This service can be provided by independent consultants that are selected by the City. Monitoring of debris removal and disposal is a critical component in successful debris operations and in the justification and documentation of any application for FEMA Public Assistance / FHWA Emergency Relief funding. Said outside monitoring firms must be selected via a competitive bid process and the contract must be valid prior to an event to ensure maximum reimbursement allowed by State and Federal Reimbursement programs.

In the event of an emergency, such as a hurricane, the City would lack sufficient resources to undertake debris monitoring services as required by FEMA/FHWA. One of the alternatives available to augment the City's emergency response capabilities is to contract for disaster recovery services with private sector service provider. An emergency services agreement, with an established service

provider, places a vast array of specialized equipment, personnel and material at the City's disposal in the event of a disaster. This will help Public Services staff to take care of their normal responsibilities in case of an event.

On April 21, 2013, the City of Tamarac published RFP 13-11R for Disaster Debris Monitoring Services. Submittals from four (4) firms were received and opened on May 14, 2013. An Evaluation Committee facilitated by the Purchasing and Contracts Manager and comprised of the Assistant Public Works Director, Public Works Operations Manager, Utilities Operations Manager, and Public Services Budget and Contracts Manager, reviewed and evaluated the submittals. The total evaluation score and subsequent ranking is summarized below, for a detailed tabulation of evaluation scores, see Temporary Resolution No. 12352.

Vendor	Total Evaluation Score	Ranking
SAIC	362.00	1
Thompson Consulting Services, Inc.	351.50	2
Witt Obrien's	304.82	3
True North Emergency Management, LLC	247.92	4

Per RFP 13-11R, the evaluation of the proposals included the following areas:

- Quality of Response
- Experience and Knowledge of Reimbursement Programs, Procedures and Guidelines
- Ability of Firm to Provide Monitoring Services
- Ability to Respond in a Timely Manner with Adequate Services
- Cost (estimated based on a moderate debris-generating event)
- Performance on Similar Events

Upon evaluation of the proposals, the Evaluation Committee determined that SAIC was the highest ranked firm.

Furthermore, the RFP and subsequent Agreement has been reviewed by the Florida Division of Emergency Management to ensure there are no known conflicts with State and Federal Reimbursement programs (e.g. FEMA, FHWA).

### **Agreement Summary**

The term of the proposed agreement is for three years with the option to renew the contract for two additional two-year periods. The Unit prices will remain fixed for the first year and may be adjusted according to the Consumer Price Index for each subsequent year.

The scope of services for this agreement is almost entirely personnel; and therefore the unit rate for all items is hourly. A detailed list of all positions and the corresponding hourly rate is included as Exhibit 2 to Temp Resolution No. 12352. It is important to note that this Agreement does not include, nor does it allow, mobilization or pre-positioning expenses. The vendor is also responsible for providing annual training related to debris monitoring at no additional cost to the City.

### **Fiscal Impact**

Funding is intangible. There will be no initial cost to this contract. The estimated expenditure will be on an emergency basis only, upon declaration of emergency.

The actual amount expended will be dependent upon the scope, size, and duration of the debris generating event, however, the contracts will ensure a competitively bid and consistent price for activities related to the debris removal and disposal activities. For the purposes of evaluating the cost component of the proposals, staff used estimated total hours for a moderate-sized debris generating storm; and based on the SAIC proposal, the estimated cost would be \$561,230. For a more detailed cost tabulation, see Temporary Resolution No. 12352.

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2013\_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, APPROVING THE AWARD FOR RFP NO. 13-11R TO SCIENCE APPLICATIONS INTERNATIONAL CORPORATION (SAIC) FOR DISASTER DEBRIS MONITORING SERVICES; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN AGREEMENT WITH SAIC FOR DISASTER DEBRIS MONITORING SERVICES; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

---

WHEREAS, the City of Tamarac is vulnerable to a variety of natural disasters including hurricanes and tornadoes; and

WHEREAS, the impact of a major disaster would exceed the ability of City emergency response resources; and

WHEREAS, in the event of a major disaster supplemental resources would be required in order to rapidly restore the City to pre-disaster conditions; and

WHEREAS, disaster debris monitoring following a debris generating event, such as a hurricane, is necessary to assure debris removal contractors operate in compliance with contracts and in accordance with state and federal reimbursement programs, including but not limited to FEMA, FHWA, and NCRS; and

WHEREAS, independent disaster debris monitoring is a critical component in successful debris removal operations; and

WHEREAS, disaster debris monitoring is essential to the justification and documentation of any application for state and federal reimbursement programs; and

WHEREAS, a disaster debris monitoring services agreement with a private

sector service provider places a vast array of specialized equipment, personnel and material at the City's disposal in the event of a disaster; and

WHEREAS, on April 21, 2013 the City published RFP No. 13-11R for Disaster Debris Monitoring Services, incorporated herein by reference and on file in the office of the City Clerk; and

WHEREAS, on May 14, 2013, the City received and opened four (4) submittals, and an Evaluation Committee, facilitated by the Purchasing and Contracts Manager and comprised of the Assistant Public Works Director, Public Works Operations Manager, Utilities Operations Manager, and Public Services Budget and Contracts Manager, reviewed and evaluated the submittals; and

WHEREAS, the Evaluation Committee evaluated the submittals per RFP 13-11R and subsequently ranked the submittals based on the total scores, a copy of the Evaluation Tabulation is hereto attached as Exhibit 1; and

WHEREAS, based upon the Evaluation Scores the top ranked firm is SAIC; and

WHEREAS, the Director of Public Services and the Purchasing and Contracts Manager recommend the City of Tamarac execute an Agreement with SAIC; and

WHEREAS, the City Commission of the City of Tamarac deems it to be in the best interest of the citizens and residents of the City of Tamarac to execute an Agreement with SAIC for Disaster Debris Monitoring Services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and



confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof. All Exhibits attached hereto are incorporated herein and made a specific part of this resolution.

SECTION 2: The City Commission HEREBY awards RFP No. 13-11R to SAIC, and approves an Agreement between the City of Tamarac and SAIC. ("The Agreement") and the appropriate City officials are hereby authorized to execute the Agreement, hereto attached as "Exhibit 2", to provide Disaster Debris Monitoring Services.

SECTION 3: All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

SECTION 5: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

---

BETH TALABISCO  
MAYOR

ATTEST:

---

PAT TEUFEL, CMC  
INTERIM CITY CLERK

I HEREBY CERTIFY that I have  
approved this RESOLUTION as to form.

---

SAMUEL S. GOREN  
CITY ATTORNEY

**DISASTER DEBRIS MONITORING SERVICES**  
Committee Evaluation Totals

Proposer's Name:	SAIC	Thompson Consulting	True North Emerg. Mgmt.	Witt/O'Brien's
No Conflict of Interest	X	X		X
Adhered to the Instructions	X	X		X
Cost (Price)	\$ 561,230.00	\$ 580,395.00	\$ 576,730.00	\$ 571,235.00
Data Manager	\$ 1,725.00	\$ 1,375.00	\$ 1,425.00	\$ 1,375.00
All Positions Cost	\$ 562,955.00	\$ 581,770.00	\$ 578,155.00	\$ 572,610.00
<b>Quality of Response (Max 10 points)</b>				
Asst. Director of Pub. Svcs/PW	9	7	7	8
Public Services/ PW Operations Manager	9	10	6	9
Public Services/ PW Budget & Contracts Manager	10	8	5	7
Public Services / Utilities Operations Manager	9	8	8	8
<b>Exp. &amp; Knowledge of Reimbursement Programs, Procedures &amp; Guidelines (Max 20 points)</b>				
Asst. Director of Pub. Svcs/PW	19	17	15	18
Public Services/ PW Operations Manager	20	18	10	15
Public Services/ PW Budget & Contracts Manager	20	15	5	10
Public Services / Utilities Operations Manager	18	18	10	13
<b>Ability of the Firm to Provide Complete Monitoring Services (Max 20 points)</b>				
Asst. Director of Pub. Svcs/PW	17	16.5	17	17
Public Services/ PW Operations Manager	18	18	10	15
Public Services/ PW Budget & Contracts Manager	20	20	10	15
Public Services / Utilities Operations Manager	18	17	12	14
<b>Ability to Respond in A Timely Manner with Adequate Services (Max 20 points)</b>				
Asst. Director of Pub. Svcs/PW	18	16	15	17
Public Services/ PW Operations Manager	15	19	15	15
Public Services/ PW Budget & Contracts Manager	15	18	10	15
Public Services / Utilities Operations Manager	17	16	13	14
<b>Cost (Price) (Max 10 points)</b>				
Asst. Director of Pub. Svcs/PW	10	9.67	9.73	9.83
Public Services / PW Operations Manager	10	9.67	9.73	9.83
Public Services / PW Budget & Contracts Manager	10	9.67	9.73	9.83
Public Services / Utilities Operations Manager	10	9.67	9.73	9.83
<b>Performance on Similar Recent Contracts (Max 20 points)</b>				
Asst. Director of Pub. Svcs/PW	17	16	14	16.5
Public Services/ PW Operations Manager	15	18	10	15
Public Services/ PW Budget & Contracts Manager	20	20	5	10
Public Services / Utilities Operations Manager	18	17	12	14
<b>TOTAL POINTS</b>				
Asst. Director of Pub. Svcs/PW	90	82.17	77.73	86.33
Public Services / PW Operations Manager	87	92.67	60.73	78.83
Public Services / PW Budget & Contracts Manager	95	90.67	44.73	66.83
Public Services / Utilities Operations Manager	90	85.67	64.73	72.83
	362	351.18	247.92	304.82
<b>TOTAL RANKING</b>				
Asst. Director of Pub. Svcs/PW	1	3	4	2
Public Services / PW Operations Manager	2	1	4	3
Public Services / PW Budget & Contracts Manager	1	2	4	3
Public Services / Utilities Operations Manager	1	2	4	3
	<b>1</b>	<b>2</b>	<b>4</b>	<b>3</b>

**AGREEMENT**  
**BETWEEN THE CITY OF TAMARAC**  
**AND**  
**SCIENCE APPLICATIONS INTERNATIONAL CORPORATION**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Tamarac, a municipal corporation with principal offices located at 7525 N.W. 88th Ave., Tamarac, FL 33321 (the "City") and Science Applications International Corporation, hereafter "SAIC", a Delaware corporation duly registered as a Florida Foreign Corporation, with principal offices located at 1710 SAIC Drive, McLean, Virginia 22102 (the "Contractor") to provide Disaster Debris Monitoring Services to the City of Tamarac, Florida.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

**1) The Contract Documents**

The contract documents shall consist of this Agreement, including Attachment A, "Schedule of Values", and Attachment B, "Electronic Monitoring" attached hereto, Request for Proposal Document No. 13-11R, titled "Disaster Debris Monitoring Services", including all conditions therein, (including any General Terms and Conditions, Supplementary Conditions, Statement of Work or any other provisions contained within the document), any and all addenda, Proposal executed and submitted by the Contractor, specifications, bond(s), (if applicable), and insurance certificate(s), the City Resolution awarding the project, and all modifications issued after execution of this Agreement. These documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event of a conflict between this document and any other contract documents, this Agreement shall prevail.

**2) Contract Term**

The successful contractor shall be awarded a contract for three (3) years with the option to renew the contract for two (2) two (2) year periods. Options for renewal will only be exercised upon mutual written agreement. Unit prices will remain firm for the first year and may be adjusted according to the Consumer Price Index (CPI) for each subsequent year.

**3) The Work**

**3.1.** The Contractor shall perform all work for the City required by the contract documents as set forth below:

**3.1.1** Contractor shall furnish all labor, materials, and equipment

necessary to provide, disaster debris monitoring services consistent with the Statement of Work included in Request for Proposal 07-11R, titled "Disaster Debris Monitoring Services".

- 3.1.2** Contractor shall provide professional / consultation services in the area of disaster debris monitoring services as more specifically set forth in Request for Proposal 13-11R, titled "Disaster Debris Monitoring Services".
- 3.1.3** Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- 3.1.4** Contractor shall provide for response time and mobilization consistent with Request for Proposal 13-11R, titled "Disaster Debris Monitoring Services".
- 3.1.5** Contractor shall comply with the provisions of the U.S. Immigration and Nationality Act, Section 274A (e) in the performance of this Agreement.
- 3.1.6** Contractor shall comply with any and all other applicable Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or sub-contractors, if any, with respect to the work and services described herein.

#### **4) Insurance**

- 4.1.** Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid or proposal document or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.
- 4.2.** Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such

insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

## **5) Schedule**

- 5.1.** Contractor shall provide for response time and mobilization consistent with Request for Proposal 13-11R, titled "Disaster Debris Monitoring Services". City shall provide Contractor with an estimated budget and estimated operational duration of monitoring upon receipt of this information.
- 5.2.** Contractor will provide for continuous services for a period specified and mutually agreed to in a notice-to-proceed.
- 5.3.** All work under this Agreement shall be completed within thirty (30) days of receipt of the final invoice from the removal and recovery contractor(s), which will be issued upon completion of removal and recovery efforts. Removal and recovery operations include closure of sites, remediation of sites, and the conclusion of all related activities.
- 5.4.** Should services be required for a longer time, Contractor shall prepare and submit a proposal including appropriate justification for extension for City approval.

## **6) Contract Pricing**

The Contract Pricing for the above work shall be based on the Schedule of Values attached hereto as Exhibit A. Actual costs shall be based on quantities required by the City at the time of an event.

## **7) Payments**

Payment will be made monthly for work that has been completed, approved, and properly invoiced. Invoices must bear the project name, project number, and purchase order number; and must include adequate supporting information to substantiate invoice. Invoices and supporting documentation shall be submitted within 30 days of occurrence. City has up to thirty (30) days to review, approve, and pay all invoices after receipt. All necessary Releases of Liens and Affidavits shall be processed before the warranty period begins. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218.

## **8) Indemnification**

- 8.1.** GENERAL INDEMNIFICATION: Contractor shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, their agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any

actual or alleged: a). Bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting, or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor, any sub-Contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the Work; or b). violation of law, statute, ordinance, governmental administration order, rule, regulation, or infringement of patent rights by Contractor in the performance of the Work; or c). liens, claims or actions made by the Contractor or any sub-contractor under workers compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost of expenses, including attorney's fees, incurred by the City to enforce this agreement shall be borne by the Contractor.

- 8.2. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.
- 8.3. The Contractor 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.
- 8.4. 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 Contractor under the indemnification agreement. Nothing contained herein 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.

## **9) Non-Discrimination & Equal Opportunity Employment**

During the performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. The Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that Sub-contractors, if any, will be made aware of and will comply with this nondiscrimination clause.

**10) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**11) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

**12) Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

CITY

City Manager  
City of Tamarac  
7525 N.W. 88th Avenue  
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308



**CONTRACTOR**

Science Applications International Corporation  
(SAIC)  
2301 Lucien Way, Suite 120  
Maitland, FL 32751  
Attn: Betty A. Kamara, Contracts Administrator  
(321) 441-8518 (321) 441-8501 fax  
[Betty.v.kamara@saic.com](mailto:Betty.v.kamara@saic.com)

**13) Termination**

**13.1 Termination for Convenience:** This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Contractor for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

**13.2 Default by Contractor:** In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

**14) Uncontrollable Forces**

**14.1** Notwithstanding the specific events for which services are to be provided under this Agreement, neither the City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**14.2** Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable

force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**15) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**16) Contractor Debarment**

Contractor shall not be debarred or suspended, nor shall any sub-contractor be debarred or suspended or otherwise ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" per U.S. Code of Federal Regulations 44 CFR 13.35.

**17) Records Retention**

Contractor and City shall maintain during the term of the contract all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Director of Financial Services or designee. All books of account, reports and records relating to this contract shall be maintained by the City and Contractor for the duration of the contract and for a minimum period of five (5) years beyond the last day of the contract term.

**18) Venue**

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

**19) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**20) Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not

constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

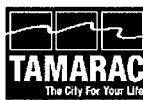
**21) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

**18) No Construction Against Drafting Party**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its Contracts Administrator, duly authorized to execute same.

### CITY OF TAMARAC

\_\_\_\_\_  
Beth Talabisco, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael C. Cernech, City Manager

ATTEST:

\_\_\_\_\_  
Pat Teufel, CMC  
Interim City Clerk

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date

Approved as to form and legal sufficiency:

\_\_\_\_\_  
City Attorney

ATTEST:

**SCIENCE APPLICATIONS**  
**INTERNATIONAL CORPORATION (SAIC)**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
(Corporate Secretary)

\_\_\_\_\_  
Signature of Contracts Administrator

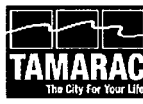
\_\_\_\_\_  
Type/Print Name of Corporate Secy.

**Betty A. Kamara**

\_\_\_\_\_  
Type/Print Name of Contracts Administrator

(CORPORATE SEAL)

\_\_\_\_\_  
Date

**CORPORATE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ :SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Betty A. Kamara, Contracts Administrator, of Science Applications International Corporation (SAIC), a Delaware Corporation, duly authorized as a Florida Foreign Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Notary Public  
State of Florida at Large

\_\_\_\_\_  
Print, Type or Stamp  
Name of Notary Public

☐ Personally known to me or  
☐ Produced Identification

\_\_\_\_\_  
Type of I.D. Produced

☐ DID take an oath, or  
☐ DID NOT take an  
oath.

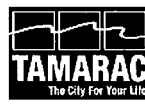
## ATTACHMENT A SCHEDULE OF VALUES DISASTER DEBRIS MONITORING SERVICES

The hourly rates include all costs, all applicable overhead and profit (excluding lodging, meals, and transportation).

POSITIONS	HOURLY RATES
Field Supervisor	\$42.00
Debris Site / Tower Monitors	\$34.00
Field Coordinators (Crew Monitors)	\$34.00
Project Manager	\$79.00
Operations Manager	\$62.00
FEMA Coordinator	\$75.00
Scheduler / Expeditors	\$34.00
GIS Analyst	\$65.00
Environmental Specialist	\$69.00
Project Inspector (Citizen Site Monitors)	\$34.00
Load Ticket Data Entry Clerks (QA / QC)	\$30.00
Billing / Invoice Analysts	\$46.00
Administrative Assistants	\$32.00
Data Manager**	\$69.00
Electronic Ticketing Device – Automated Debris Management System (ADMS) for use with only the following positions: -Field Supervisor -Debris Site / Tower Monitors -Field Coordinator (Crew Monitors) -Operations Manager -Project Inspector (Citizen Site Monitors) -Data Manager	\$ 4.00

\*These hours are not intended to represent the actual contract amount. The actual Agreement shall be for actual quantities used. This is a “Pre-positioning” contract and no minimum amount of hours/work is guaranteed or implied.

\*\* Data Manager: oversees the entering, tabulating, and organization of collection and disposal data into required formats in compliance with requirements of FEMA, FHWA, and all other applicable federal, state, and local agencies. The Data Manager provides the City, debris contractors, and applicable public agencies with regular updates on the quantities and types of debris collected. The Data Manager also designs and



implements quality assurance and control processes for the review and verification of field and debris contractor-provided data in support of invoices. The Data Manager serves as the City's representative in meetings with representatives of the Debris Contractor(s), State of Florida, FEMA, or other federal, state, or local agency speaking to data-related issues.

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## ATTACHMENT B

### Electronic Monitoring

The Consultant MAY exercise the option to utilize electronic debris monitoring. If chosen, the consultant must comply with the requirements included in "Attachment B"; in addition to all other requirements contained within this document.

#### **A. EQUIPMENT REQUIREMENTS**

1. **Data Storage Media** – Debris Management data will be stored and transferred on encryption protected removable data storage media. All data media will be provided by the Consultant. Data must include a unique user ID which identified the user's role, limits the user's ability to collect or validate information, etc. and employs an anti-tampering mechanism. Consultant shall provide media to each person performing a debris mission role that results in data collection (i.e. drivers, ticket managers, etc.)
2. **Handheld Units (HHU)** – The Consultant will provide weather-proof and shock resistant handheld units (HHU) for recording debris management data in the field. These HHU devices will be capable of writing data to, and reading data from, the removable data storage media. HHUs shall have the capability to determine locations by GPS and the capability to write GPS coordinates to the removable media. The HHUs will perform two functions (1) Recording of initial load data information, and (2) verification of vehicle certification, and recording of debris type and quantity and (3) All field units will be operated by stand-alone power sources which will allow the units to perform uninterrupted for a shift.
  - a) HHUs capable of recording truck certification data onto driver removable media are used at the truck certification area. Truck certification records will include truck measurements, truck ID, Driver ID, and a digital photograph of the truck and trailers.
  - b) HHUs capable of recording user ID information, including a unique user ID, digital photograph and any additional user information required for system operation.
  - c) GPS – HHU units shall have integrated GPS capability. GPS reading (accuracy within 3 meters of the HHU) shall automatically be recorded without any additional manual effort each time the HHU unit records and retrieves information related to the debris mission. External GPS units shall have connectivity to the HHU and be rugged and durable.
3. **Durable Printer** – The Consultant shall provide a durable printer to print load tickets at the request of the City. Once the tower manager completes the load data entries the information shall be transmitted to the printer. The printer will print a minimum 2 (two) copies of the ticket. Two copies shall be given to the driver (one copy for the driver and the other for the prime contractor). The HHU should have program flexibility to alter the number of printed tickets. The printed ticket paper and print shall be of a quality that the print is not affected by



harsh weather conditions and does not fade over time, nor smear or deteriorate due to moisture or UV rays. All field units will be operated by stand-alone power sources which will allow units to perform uninterrupted for a minimum of a shift.

4. **Server(s)** – The Consultant shall provide computer servers for the storage and maintenance of records. The data contained in the Consultant's database shall be placed on the internet for controlled use, and be password protected by the Consultant. Upon completion of the work, the consultant shall surrender the records to the City who shall maintain the official database and records on its government furnished secure server. Access to the City server is limited to "Official Use Only". The City server is provided and maintained by the City.
5. **Back-up Equipment** – In the event of equipment malfunction, loss or damage, the Consultant shall assure a sufficient supply of replacement equipment and personnel are available such that production is not affected. The back-up equipment shall be readily available on-site for rapid distribution.
6. **GIS** – GIS mapping shall be provided by the Consultant from the most current source(s) available. This information shall be used as a base map to visually illustrate work zones, ticket and tower personnel locations and activities, work progress, historically and/or environmentally sensitive areas, geospatial data and other mission informational needs from the data gathered by the HHUs.
7. **Internet Accessible Database** – The Consultant will establish a web-based database which is updated daily, if not real-time. The data shall be accessible, by permission only, to sub-contractors, local and state officials, and others on a "need-to-know" basis. Database access will be role-based and no direct access to the data tables shall be allowed, unless approved by the City.

#### **B. General Statement of Electronic Debris Monitoring System Parameters**

1. The system must utilize an encryption protected removable data storage device. The data storage device will store data collected in the field, such as fields from traditional debris paper tickets as well as truck certification information. The device must be capable of depicting images and other identifying data.
2. The system must have a database capable so storing all data collected in the field. The consultant shall provide the City a copy of the database with a matching structure at the completion of the work unless otherwise specified.
3. The system must include the capability to share database records with contractors, sub-contractors, the City, and others via the internet. Data contained in the system must be password protected, implement role-based access controls and must have viewing, printing and editing capabilities. Each contractor, sub-contractor and customer must have permissions that allow only them to review and print information specific to their need. The system shall also have the capability to generate reports on all aspects of the debris mission.

4. The Consultant uses the HHU to initial the load data entry by entering the debris type in the HHU. The driver's media card will either be swiped or inserted into the HHU and the HHU will write the debris type, pick-up GPS location, address of the pick-up (if applicable), time, date, truck certification, and driver information, and the ticket manager's unique ID Code onto the removable media. Once the data is written to the media, the Ticket Manager will return the media to the driver. By this action, the Consultant verifies the debris meets FEMA and FHWA eligibility requirements.
5. HHUs are used at the debris verification area of disposal site(s) by tower manager. The vehicle driver presents the removable media, which was previously initiated by the field monitor, to the tower manger personnel located in the disposal site tower(s). The tower manger verifies the debris classification is appropriate (vegetative, C&D, mixed, etc.) and manually revises, if needed, quantity into the HHU. The HHU will automatically extract the information recorded earlier on the smart card and add the information to the tower manager's HHU including the date, time debris arrives, site ID, GPs readings, load quantity, and tower manger unique ID code.
6. All information regarding each debris load will be stored in the HHUs internal memory or on a separate, encryption enabled removable media device. The debris load information will be uploaded to the system City and Consultant databases. Once this information is recorded, the tower manager HHU will clear the removable media's data for the driver to re-use.
7. The media will retain the running total of the quantity and type of debris hauled by a particular vehicle. All debris load information with the tower manager HHU will be retained until upload to the database has been accomplished and confirmed by authorized personnel. Direct access to data on the HHU will be restricted to personnel specifically authorized to do so by the City.

### **C. Functional Specifications and System Architecture**

1. **Ticket/Tower Mangers** – Personnel Registration, Administration and Management: The System shall have the capability to manage user roles. The majority of the system users will be either ticket or tower managers. At a minimum, the system must have the following capabilities:
  - A means to create encryption protected electronic media with unique User ID, digital photograph, user roles and other identifying data
  - Electronic registration of ticket / tower monitor
  - Link designated ticket / tower personnel to a specific mission
  - The ability to edit ticket / tower personnel roles (i.e. create, update, and delete)
  - Store ticket / tower personnel contact information relative to the mission
  - Track and manage ticket / tower personnel role and status
  - Assign and track equipment assigned to the user

- Reject invalid ticket / tower personnel credentials
  - Reject invalid certification credentials
2. **Truck Certification:** the system shall have the capability to record truck and trailer certification data. Truck certification is used to register authorized debris hauling vehicles and equipment. At a minimum, the following must be included:
- A means of electronically registering authorized debris Consultant vehicles and equipment
  - Link electronic registration to digital images
  - Identify mission and respective City
  - Generate unique ID's for contractor vehicles and equipment
  - Utilize uniform measurements (e.g. feet and inches)
  - Capture vehicle volume
  - Utilize industry standard equations for all volume calculations
  - Capture drivers and certification team member unique identification number
  - A means to create encryption protected electronic driver removable media with unique Truck ID, digital photograph, truck and/or trailer measurements, vehicle volume, and other identifying data
  - Must depict image and other identifying data
  - Must contain counter area for total cubic yards hauled
  - Must employ anti-tampering mechanism
  - Capability to recertify vehicles
  - Recertified vehicles must be recorded in an audit table
  - Reject media which are not associated with current event and applicant
  - Capture vehicle audit records
  - Create a printed certification record
  - Administrative reporting capabilities
3. **Right-of-Way (ROW) Debris Management:** ROW Transaction data ROW transaction data must be captured, stored, validated, audited, reported, and transmitted to mission manager, haulers, and applicants. At a minimum, the application must exhibit the following characteristics:
- Allow creation point of origin load data on encryption protected driver media when position is known and credentials have been authenticated
  - Capture date and time and other relevant point of origin data
  - Designate debris type
  - Designate debris location as Federal Aid or Non-Federal Aid
  - Designate first pass and subsequent passes
  - Write point of origin load data using encrypted storage algorithms
  - Associate ticket/tower personnel credentials with point of origin load data
  - Acknowledge successful card writ via display status message
  - Provide user configurable time option for GPS audit
  - Detect current location using GPS and store data to secure memory

location

- Provide capability to add digital image if debris is other than vegetative or C&D

4. **Debris Disposal Site Management:** Completed ROW, and Per-unit point of origin transactions must be received at the approved disposal site. Transactions must be received at the approved disposal site. Transactions are not considered complete until they are processed through the receiving applications. At a minimum, the system must provide the capability to:

- Accept site configuration data at the beginning of each work day
- Dynamically configure receiving application based onsite configuration data
- Display certification data and photo from driver smart card so that ticket/tower personnel can perform a field audit of truck/trailer to assure data matches certification and placard number
- Accept loads where:
- Mission and applicant are valid
- Media authentication data is valid and unaltered
- Media contains valid load data
- Designate debris type
- Record debris volume (based on unit of measure)
- Receive volume or per unit loads
- Identify original load data
- Identify duplicate load data
- Configure number of hard copies
- Create load data record in internal storage
- Create backup copy of internal storage
- Prepare driver media for next load
- Increment driver smart card based on total CY counter value
- Continuously calculate and present real-time disposal site statistics
- Reprint load ticket data
- Interface with durable outdoor printer
- Preserve in its original state, then transmit daily transaction data
- Associate ticket/tower personnel credentials with each receivable load

5. **Field Administrative Functions:** The system must have the capability to perform administrative duties in the field. Requirements include the capability to edit user roles, verify vehicle audit information, display real-time collection volumes, and review ticket/tower personnel GPS audit logs. At a minimum, the system must provide the capability to:

- Change ticket/tower personnel identification badge roles and responsibilities
- Review media total CY counter value
- Audit vehicle certification data

- Validate/invalidate smart cards
- Reinitiate security sequence for ticket/tower personnel or media
- In tabular format, display the results of ticket/tower GPS audit files by limiting access to the internet data or by the secure server.

6. **Data Consolidation and Analysis/Report Generation:** Transactional data must be summarized, validated, presented and audited to provide an overall status of mission performance. The system must facilitate billing, error reporting, performance tracking and graphical data preparation. At a minimum the Data Consolidation/Data Storage and Data:

Analysis/Report Tools must provide capability to:

- Accept transactional data sets from multiple debris location systems
- Recognize multiple mission/applicant configurations
- Grant access to authorized authenticated users or processes
- Contain a master record of:
  - Roles and responsibilities
  - Ticket/tower personnel credentials and other data
  - Certification credentials and other data
  - Mission data
  - Applicant data
  - Geospatial data
    - Street centerlines
    - City outlines
    - Population and demographic
    - Elevation
    - Wetlands delineation
    - Historic and Environmentally sensitive areas
    - Debris and work zones
    - Land use
    - FEMA flood zones
- Graphically depict
  - Load locations by contractor
  - Load locations by subcontractor
  - Load locations by driver
  - Load locations by ticket/tower personnel
  - Load locations by date range
  - Load locations by zone
  - Load locations by municipality
  - Load locations by applicant
  - Load locations by mission
  - Load locations by debris type
  - Load locations by disposal site
  - Load locations by Federal, State, and private roads
  - Load locations by land use
- Thematic mapping techniques to distinguish different data by color and/or

symbol

- Identify data attributes for a single point of data
- Select one or many points of data
- Calculate operational efficiency statistics such as:
  - Trip turnaround time
  - Trip distance to disposal site (straight line projection sorted by 0-15 miles, 16-30 miles, 31-60 miles, and greater than 61 miles)
  - Average container fill percentage
  - Average tower manager load call
  - Load call trend data e.g., by tower manager, contractor, subcontractor, driver, etc.
- Dynamically configure user interface in response to point data selection to limit user authorities
- Multiple data selections general tabular data reports
- Filter mechanisms to highlight geospatial data
- Control data access using role based security
- User interface and access to underlying system data must dynamically configured at run time through the presentation of appropriate user credentials
- Manage data ownership
- Provide access based on security role model
- Identify and distribute “owned” transactional datasets to limit internet access to the website data to view only your data
- Prevent distributed data from being reprocessed for billing purposes
- Identify billing data sets based on parameters such as:
  - Time/Date
  - Contractor/Subcontractor
  - Debris type
  - Debris disposal method (haul-in, reduction, open burn, incineration, haul out, leave in place, etc.)
  - Haul distance
- Route billing data sets via defined and customizable workflow rules
- Approved billing data sets
- Communicate general event status e.g.:
  - Total CY hauled (by debris type)
  - Total CY by disposal site
  - Total CY by contractor/subcontractor
  - Total CY by work zone/sector
  - Total CY by municipality
  - Total CY by Federal, state and private roads
  - Total CY by certified vehicle
  - Number of vehicles utilized
  - Number of ticket/tower personnel resources assigned
- Manage user roles, responsibilities and passwords
- Prevent modification to original data by unauthorized or unauthenticated

users

- Insert audit records into audit tables for all insertions, modifications, and deletions to original data

7. **Field Architecture:** The field based system must be characterized by the following general statements of direction with respect to construction, operability, supportability and security. At a minimum, the system must:

- Require user authentication credentials
- Display current version at application start-up
- Synchronize with Greenwich Mean Time (GMT) for all date/time fields
- System must utilize location specific configuration data to initiate a warm start sequence for global positioning system
- System must remain in a ready state by default
- Acknowledge successful card write via display status message
- Create identification structures which utilize encryption technologies
- Employ anti-tamper and anti-tearing methods and technologies
- Where applicable, utilize 3 DES data encryption technologies to protect data
- Perform validation and checksum (a running production total of cubic yards or appropriate payment capacity) stored on each debris vehicle's removable media)

8. **Back-office Architecture:** At a minimum, the back-office applications must be characterized by the following general statements of direction with respect to construction, operability, supportability and security.

- Utilize relational database technology
- Employ geospatial analysis tools for data visualization
- Enable audit ability for:
  - Data insertion
  - Data modification
  - Data deletion
- Prevent field and row level data deletion
- All access to data must be controlled
- Store certification and other identification data using encrypted relational technology
- Reside in a secure internet environment
- Preserve base transactional data in its original state prior to processing or consolidation with other data

9. **Initial Startup Procedure For Debris Removal:** Debris missions are critical to emergency response and the Consultant should be adequately prepared to respond.



**Title - TR12354 - Resolution Approving the Award of RFP No. 13-10R to Ashbritt, Inc. and Crowder Gulf Joint Venture, Inc. for Disaster Debris Removal and Disposal Services**

Item No. 6 (c) on the Consent Agenda. (TR12354) A Resolution of the City Commission of the City of Tamarac, Florida, approving the Award of RFP No. 13-10R to Ashbritt, Inc. and Crowder Gulf Joint Venture, Inc. for Disaster Debris Removal and Disposal Services; authorizing the appropriate City Officials to execute Agreements with Ashbritt, Inc. and Crowder Gulf Joint Venture, Inc. for Disaster Debris Removal and Disposal Services; providing for conflicts; providing for severability; providing for an effective date. - **Public Services**  
**Director Jack Strain**

**ATTACHMENTS:**

Name:

Description:

- 📎 [TR\\_12354\\_Signed\\_Memo.pdf](#)
- 📎 [TR\\_12354- RESO - Disaster Debris Removal R13-10R.doc](#)
- 📎 [EX\\_1\\_Evaluation\\_Tabulation.pdf](#)
- 📎 [Ex\\_2\\_Ashbritt\\_Agreement\\_\(initialed\).pdf](#)
- 📎 [Ex\\_3\\_CrowderGulf\\_Agreement\\_\(initialed\).pdf](#)


TR 12354 Memo  
TR 12354 - Reso  
EX 1 - TR 12354 Evaluation Tabulation  
Ex 2 - Ashbritt Agreement  
Ex 3 CrowderGulf Agreement




**CITY OF TAMARAC  
INTEROFFICE MEMORANDUM  
PUBLIC SERVICES DEPARTMENT**

**TO: Mike C. Cernech, City Manager**

**DATE: June 7, 2013**

**THRU: Jack Strain, Public Services  
Director** 

**FROM: Troy Gies, Budget and Contracts  
Manager** 

**RE: Temp. Reso. #12354 – Award of  
RFP No. 13-10R for Disaster  
Debris Removal and Disposal  
Services – City Commission  
Meeting of June 26, 2013**

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**Recommendation:**

I recommend the award of RFP No. 13-10R for Disaster Debris Removal and Disposal Services and execution of Agreements to ASHBTRIT, INC. and CROWDERGULF JOINT VENTURE, INC.; and that this item be placed on the June 26, 2013 Commission Agenda.

**Issue:**

Award of RFP 13-10R and execution of Agreements between the City of Tamarac and Ashbtritt, Inc. and CrowderGulf, Joint Venture, Inc. as primary and secondary vendors, respectively, for Disaster Debris Removal and Disposal Services.

**Background:**

The City of Tamarac Public Works Department is the lead agency responsible for providing emergency engineering/public works services in the event of a disaster. These services include the repair of public infrastructure and facilities, clearance of debris and restoration of critical public services.

In the event of a major disaster, such as a hurricane, the City's Public Services Department would require supplemental resources in order to rapidly restore the City to pre-disaster conditions. However, given a large regional disaster, mutual aid resources from neighboring jurisdictions would be extremely limited or unavailable.

One of the alternatives available to augment the City's emergency response capabilities is to contract for disaster recovery services with private sector service provider. An emergency services agreement, with an established service provider, places a vast array of specialized equipment, personnel and material at the City's disposal in the event of a disaster.

On April 21, 2013, the City of Tamarac published RFP 13-10R for Disaster Debris Removal and Disposal Services. Submittals from eight (8) firms were received and opened on May 14, 2013. An Evaluation Committee, facilitated by the Purchasing and Contracts Manager and comprised of the Assistant Public Works Director, Public Works Operations Manager, Utilities Operations Manager, and Public Services Budget and Contracts Manager, reviewed and evaluated the submittals. The total evaluation score and subsequent ranking is summarized below, for a detailed evaluation tabulation, see Temporary Resolution No. 12354.

Vendor	Total Evaluation Score	Ranking
Ashbritt, Inc.	344.56	1
CrowderGulf Joint Venture, Inc.	327.12	2
D&J Enterprises, Inc.	273.00	3
Ceres Environmental Services Inc.	272.54	4
Arbor Tree & Land, Inc.	242.62	5
DRC, Inc.	240.38	6
Bergeron Emergency Services, Inc.	223.30	7
Tag Grinding Services, Inc.	222.76	8

Per RFP 13-10R, the evaluation of the proposals included the following areas:

- Qualification of the Vendor,
- Ability to fulfill the scope of the project and meet the needs of the City;
- Technical Approach; and
- Cost

Upon evaluation of the proposals, the Evaluation Committee determined that Ashbritt, Inc. was the highest ranked firm, and CrowderGulf was the second highest ranked firm. Per the RFP 13-10R, Ashbritt is recommended as the primary vendor and CrowderGulf as the secondary vendor.

Furthermore, the RFP and subsequent Agreements have been reviewed by the Florida Division of Emergency Management to ensure there are no known conflicts with State and Federal Reimbursement programs (e.g. FEMA, FHWA).

#### **Agreement Summary**

The term of the proposed agreement is for three years with the option to renew the contract for two additional two-year periods. The Unit prices will remain fixed for the first year and may be adjusted according to the Consumer Price Index for each subsequent year.

The primary scope of the Agreement is for collection, reduction, and disposal of disaster debris. Although the units vary slightly depending upon the type of material, they are primarily units of volume (e.g. cubic yards). Certain specific items which do not lend themselves to tracking by volume (e.g. removal of hazardous/leaning trees and stumps) are charged by item based upon the size of their diameter. These rates are inclusive of equipment and personnel. It is important to note that this Agreement does not include, nor does it allow, mobilization or pre-positioning expenses.

#### **Fiscal Impact:**

Funding is intangible. There will be no initial cost to this contract. The estimated expenditure will be on an emergency basis only, upon declaration of emergency. However, executing agreements with two qualified firms for debris removal services may entitle the City to an additional 5% reimbursement from FEMA.

The actual amount expended will be dependent upon the scope, size, and duration of the debris generating event, however, the contracts will ensure a competitively bid and consistent price for activities related to the debris removal and disposal activities. The following tabulation is based on the submitted proposals and were used for evaluation purposes, the costs represent what could be expected in a moderate sized debris generating storm, for a detailed cost tabulation, see Temporary Resolution No. 12354.

Vendor	Cost
Ashbritt, Inc.	\$ 9,499,038
CrowderGulf Joint Venture, Inc.	\$ 10,217,163

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2013\_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, APPROVING THE AWARD OF RFP NO. 13-10R TO ASHBRIIT, INC. AND CROWDER GULF JOINT VENTURE, INC. FOR DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AGREEMENTS WITH ASHBRIIT, INC. AND CROWDER GULF JOINT VENTURE, INC. FOR DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the City of Tamarac is vulnerable to a variety of natural disasters including hurricanes and tornadoes; and

WHEREAS, the impact of a major disaster would exceed the ability of City emergency response resources; and

WHEREAS, in the event of a major disaster supplemental resources would be required in order to rapidly restore the City to pre-disaster conditions; and

WHEREAS, a disaster recovery agreement with a private sector service provider places a vast array of specialized equipment, personnel and material at the City's disposal in the event of a disaster; and

WHEREAS, on April 21, 2013 the City published RFP No. 13-10R for Disaster Debris Removal and Disposal Services, incorporated herein by reference and on file in the office of the City Clerk; and

WHEREAS, Public Services staff determined, on the basis of State and Federal reimbursement program requirements and industry standards, to award multiple contracts ensuring adequate availability and capacity of disaster debris removal and

disposal services; and

WHEREAS, on May 14, 2013, the City received and opened eight (8) submittals, and an Evaluation Committee, facilitated by the Purchasing and Contracts Manager and comprised of the Assistant Public Works Director, Public Works Operations Manager, Utilities Operations Manager, and Public Services Budget and Contracts Manager, reviewed and evaluated the submittals; and

WHEREAS, the Evaluation Committee evaluated the submittals per RFP 13-10R and subsequently ranked the submittals based on the total scores, a copy of the Evaluation Tabulation is hereto attached as Exhibit 1; and

WHEREAS, based upon the Evaluation Scores the top ranked firm is Ashbritt, Inc., and the second ranked firm is CrowderGulf Joint Venture; and

WHEREAS, the Director of Public Services and the Purchasing and Contracts Manager recommend the City of Tamarac execute an Agreement with Ashbritt, Inc. as the primary vendor, and execute an Agreement with CrowderGulf Joint Venture as the secondary vendor; and

WHEREAS, the City Commission of the City of Tamarac deems it to be in the best interest of the citizens and residents of the City of Tamarac to execute Agreements with Ashbritt, Inc. and CrowderGulf Joint Venture for Disaster Debris Removal and Disposal Services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and

confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof. All Exhibits attached hereto are incorporated herein and made a specific part of this resolution.

SECTION 2: The City Commission HEREBY awards RFP No. 13-10R to Ashbritt, Inc. and CrowderGulf Joint Venture, and approves Agreements between the City of Tamarac and Ashbritt, Inc and CrowderGulf Joint Venture. ("The Agreements") and the appropriate City officials are hereby authorized to execute the Agreements, hereto attached as "Exhibit 2" and "Exhibit 3", respectively, to provide Disaster Debris Removal and Disposal Services.

SECTION 3: All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

SECTION 5: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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BETH TALABISCO  
MAYOR

ATTEST:

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PAT TEUFEL, CMC  
INTERIM CITY CLERK

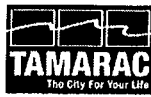
I HEREBY CERTIFY that I have  
approved this RESOLUTION as to form.

---

SAMUEL S. GOREN  
CITY ATTORNEY

**DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES**  
Committee Evaluation Totals

Proposer's Name:	Ashbritt	ATL	Bergeron	Ceres	Crowder-Gulf	D & J Ent.	DRC	TAG Grinding
No Conflict of Interest	X	X	X	X	X	X	Emerg. Serv. X	X
Adhered to the Instructions	X	X	X	X	X	X	X	X
Cost (Price)	\$ 9,499,037.50	\$ 16,298,150.00	\$ 6,341,250.00	\$ 8,412,670.46	\$ 10,217,162.50	\$ 5,476,066.50	\$ 7,485,057.00	\$ 7,507,875.00
<b>Qualifications Evaluation (Max 30 points)</b>								
Asst. Director of Pub. Svcs/PW	27	21	22.5	25	28	24	21	18
Public Services/ PW Operations Manager	25	24	10	23	25	20	15	17
Public Services/ PW Budget & Contracts Manager	30	20	5	25	28	10	20	15
Public Services / Utilities Operations Manager	28	15	15	14	25	20	19	12
<b>Ability Evaluation (Max 30 points)</b>								
Asst. Director of Pub. Svcs/PW	26	23	20	21	24	20	18	15
Public Services/ PW Operations Manager	25	10	15	15	25	20	15	15
Public Services/ PW Budget & Contracts Manager	30	20	10	25	28	10	15	15
Public Services / Utilities Operations Manager	27	15	18	12	24	20	12	11
<b>Technical Evaluation (Max 25 points)</b>								
Asst. Director of Pub. Svcs/PW	23	17.5	18	22.5	22	18	16.5	15
Public Services/ PW Operations Manager	20	15	15	18	20	18	10	15
Public Services/ PW Budget & Contracts Manager	25	25	5	20	25	15	20	20
Public Services / Utilities Operations Manager	24	17	18	13	21	18	15	11
<b>Cost (Price) (Max 15 points)</b>								
Asst. Director of Pub. Svcs/PW	8.64	5.03	12.95	9.76	8.03	15	10.97	10.94
Public Services / PW Operations Manager	8.64	5.03	12.95	9.76	8.03	15	10.97	10.94
Public Services / PW Budget & Contracts Manager	8.64	5.03	12.95	9.76	8.03	15	10.97	10.94
Public Services / Utilities Operations Manager	8.64	5.03	12.95	9.76	8.03	15	10.97	10.94
<b>TOTAL POINTS</b>								
Asst. Director of Pub. Svcs/PW	84.64	66.53	73.45	78.26	82.03	77	66.47	58.94
Public Services / PW Operations Manager	78.64	54.03	52.95	65.76	78.03	73	50.97	57.94
Public Services / PW Budget & Contracts Manager	93.64	70.03	32.95	79.76	89.03	50	65.97	60.94
Public Services / Utilities Operations Manager	87.64	52.03	63.95	48.76	78.03	73	56.97	44.94
	344.56	242.62	223.3	272.54	327.12	273	240.38	222.76
<b>TOTAL RANKING</b>								
Asst. Director of Pub. Svcs/PW	1	6	5	3	2	4	7	8
Public Services / PW Operations Manager	1	6	7	4	2	3	8	5
Public Services / PW Budget & Contracts Manager	1	4	8	3	2	7	5	6
Public Services / Utilities Operations Manager	1	6	4	7	2	3	5	8
	1	5	7	4	2	3	6	8



**AGREEMENT**  
**BETWEEN THE CITY OF TAMARAC**  
**AND**  
**ASHBRITT, INC.**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of by and between the City of Tamarac, a municipal corporation with principal offices located at 7525 N.W. 88th Ave., Tamarac, FL 33321 (the "CITY") and Ashbritt, Inc., a Florida corporation with principal offices located at 565 Hillsboro Boulevard, Deerfield Beach, Florida 33441 (the "Contractor") to provide Stand-by, Pre-Event Disaster Debris Removal and Disposal Services as the primary contractor.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

**1) The Contract Documents**

The contract documents shall consist of this Agreement, Request for Proposal Document No. 13-10R, titled "Disaster Debris Removal and Disposal Services", and including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda, the Contractor's bid/proposal included herein, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between Request for Proposal No. 13-10R, Disaster Debris Removal and Disposal Services, as issued by the City, and the Contractor's Proposal, dated May 14, 2013, Request for Proposal No. 13-10R, Disaster Debris Removal and Disposal Services as issued by the City shall take precedence over the Contractor's Proposal. Furthermore, in the event of a conflict between this document and any other contract documents, this Agreement shall prevail.

**2) Contract Term**

The successful contractor shall be awarded a contract for three (3) years with the option to renew the contract for two (2) additional two (2) year periods. Options for renewal will only be exercised upon mutual written agreement. Unit prices will remain firm for the first year and may be adjusted according to the Consumer Price Index (CPI) for each subsequent year.

**3) The Work**

**3.1.** The Contractor shall perform all work for the City required by the contract documents as set forth below:

**3.1.1** Contractor shall furnish all labor, materials, and equipment necessary to provide Disaster Debris Removal and Disposal Services as required by the City. Contractor shall adhere to all requirements of the Statement of Work for RFP 13-10R as incorporated in the Contract Documents as delineated in Section 1 of this Agreement.

**3.1.2** Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's





expense.

- 3.1.3 Contractor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
- 3.1.4 Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.
- 3.1.5 Bonding: Contractor shall provide the City with a Performance and Payment Bond in the amount of \$1,000,000 or 100% of the contract value, whichever is greater, within three (3) calendar days of a written Notice to Proceed by City. Once activated, the Payment and Performance Bonds shall be in force for a period of not less than one (1) year from the date of original execution by the Bond Surety."

**4) Insurance**

- 4.1. Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid or proposal document or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager Certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.
- 4.2. Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

**5) Time of Commencement and Substantial Completion**

- 5.1. The work to be performed under this Agreement shall be commenced after City execution of the Agreement and upon issuance of a written Notice to Proceed by the City as the result of an event requiring Contractor's services. The Contractor shall begin preparation for mobilization immediately after receiving the Notice to Proceed and be fully operational within forty eight (48) hours, or as specifically directed by the City. If emergency road clearance is needed, Contractor shall have crews working within twenty-four (24) hours.
- 5.2. The work, including site restoration prior to close-out shall be completed within thirty (30) calendar days after receiving notice from the CITY that the last load of debris has been delivered.

**6) Contract Sum**

Pricing for this Agreement shall be in accordance with the schedule of unit prices attached hereto as Appendix A.

**7) Payments**

Payment will be made monthly for work that has been completed, inspected and properly invoiced. Invoices must bear the project name, project number, proposal number and purchase order number. Contractor shall submit invoices for no more than 30 day increments. City has up to thirty (30) days to review, approve and pay all invoices after receipt. All necessary Releases of Liens and Affidavits shall be processed before the warranty period begins. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218, as well as the Request for Proposal 13-10R, "Disaster Debris Removal and Disposal Services", "Technical Specifications", Section G "Invoices".

**8) Waiver of Liens**

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release City from all claims of liability by Contractor in connection with the agreement.

**9) Warranty**

Contractor warrants the work against defect for a period of one (1) year from the date of completion of work. In the event that defect occurs during this time, Contractor shall perform such steps as required to remedy the defects. Contractor shall be responsible for any damages caused by defect to affected area or to interior structure. The one (1) year warranty period does not begin until substantial completion of the entire project, and the subsequent release of any Performance or Payment Bonds, which may be required by the original bid document.

**10) Indemnification**

**10.1.** The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

**10.2.** Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

i. The Contractor 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.



- ii. 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 Contractor under the indemnification agreement

**10.3.** Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 786.28, as amended from time to time

**11) Non-Discrimination & Equal Opportunity Employment**

During the performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. The Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that Sub-contractors, if any, will be made aware of and will comply with this nondiscrimination clause.

**12) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**13) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

**14) Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified



Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

CITY

City Manager  
City of Tamarac  
7525 N.W. 88th Avenue  
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308

CONTRACTOR

Mr. John W. Noble, Vice President  
Ashbritt, Inc.  
565 E. Hillsboro Boulevard  
Deerfield Beach, FL 33441  
(954) 545-3535 fax: (954) 545-3585

**15) Termination**

**15.1. Termination for Convenience:** This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Contractor for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

**15.2. Default by Contractor:** In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

**16) Uncontrollable Forces**

**16.1.** Notwithstanding the specific events for which services are to be provided under this Agreement, neither the City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**16.2.** Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence,



prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**17) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**18) Venue**

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

**19) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**20) Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**21) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

**18) No Construction Against Drafting Party**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

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CITY OF TAMARAC

CONTRACTOR

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its Vice President, duly authorized to execute same.

**CITY OF TAMARAC**

\_\_\_\_\_  
Beth Talabisco, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael C. Cernech, City Manager

ATTEST:

\_\_\_\_\_  
Pat Teufel, CMC  
Interim City Clerk

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Approved as to form and legal sufficiency:

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
(Corporate Secretary)

RALPH DAHLGREN  
Type/Print Name of Corporate Secy.

(CORPORATE SEAL)

**ASHBRITT, INC.**

\_\_\_\_\_  
Company Name

  
\_\_\_\_\_  
Signature of Vice President

**John Noble**

\_\_\_\_\_  
Type/Print Name of Vice President

\_\_\_\_\_  
Date

6/6/2013



CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA :  
COUNTY OF BROWARD :SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared John Noble, Vice President, of Ashbritt, Inc., a Florida Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this, day of JUNE 6, 2013.



KELLY BECKMANN  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE864681  
Expires 1/13/2017

Kelly Beckmann  
Signature of Notary Public  
State of Florida at Large

KELLY BECKMANN  
Print, Type or Stamp  
Name of Notary Public



Personally known to me or  
Produced Identification

\_\_\_\_\_  
Type of I.D. Produced



DID take an oath, or  
DID NOT take an  
oath.



**EXHIBIT A**

**SCHEDULE OF VALUES**

**SEE NEXT PAGE**

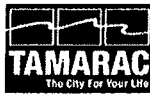


**SCHEDULE 2 - UNIT RATE PRICE SCHEDULE** Reference to RFP Scope of Services Item  
 elects to No Bid" individual service offerings their proposal may be considered non-  
 Items 12 - 15 are Ancillary Services. Vendors are requested to provide a cost for and  
 these costs will not be used for evaluative purposes. "

2	Vegetative Debris Removal (based on Section 2.3.2) Work consists of the collection and transportation of eligible vegetative debris on the ROW or public property to a City approved debris management site (DMS) or City approved final disposal site.		\$ Per Cubic Yard
	Removing debris from public property and ROW and hauling to DMS		\$10.25
3	C&D Debris Removal (based on Section 2.3.3) Work consists of the collection and transportation of eligible C&D on the ROW or public property to a City approved final disposal site.		\$ Per Cubic Yard
	Removing C&D debris from ROW or public property and hauling to DMS		\$10.25
3	Debris Removal from Canals / Waterways (based on Section 2.3.4) Work consists of the collection and transportation of eligible debris from City maintained canals and waterways to a City approved final disposal site.		\$ Per Cubic Yard
	Removing debris from city maintained canals/waterways and hauling to DMS		\$40.00
6	DMS Operation and Reduction Through Grinding (based on Section 2.3.5) Work consists of managing and operating DMS for acceptance and reduction of eligible vegetative disaster related debris through grinding. The costs associated with acquiring, preparing, leasing, renting, operating, and remediating land used as DMS is reflected in this bid.		\$ Per Cubic Yard
			\$4.55

8	Haul-out of Reduced Debris to a City Approved Final Disposal Site (based on Section 2.3.6) Work consists of loading and transporting reduced eligible disaster related debris at a City approved DMS to a City designated final disposal site.		\$ Per Cubic Yard
			\$7.50
9	Removal of Hazardous Trees and Limbs (based on Section 2.3.7) Work consists of removing eligible hazardous trees or limbs and placing them on the safest possible location on the City ROW for collection under the terms and conditions of Scope of Services Item 2, Vegetative Debris Removal.		\$ Per Tree
	6 inch to 12.99 inch diameter		\$85.00
	13 inch to 24.99 inch diameter		\$85.00
	25 inch to 36.99 inch diameter		\$195.00
	37 inch to 48.99 inch diameter		\$350.00
	49 inch and larger diameter		\$350.00
	Hanger Removal (per Tree)		\$100.00
10	Removal of Hazardous Stumps (based on Section 2.3.8) Work consists of removing eligible hazardous stumps and transporting resulting debris from the ROW to a City approved DMS. Rate includes removal, backfill of stump hole, reduction, and final disposal.		\$ Per Stump
	24.1 inch to 36.99 inch diameter		\$125.00
	37 inch to 48.99 inch diameter		\$195.00
	49 inch and larger diameter		\$275.00
11	ROW White Goods Debris Removal (based on Section 2.3.9) Work consists of the removal of eligible White Goods from the ROW to a City approved DMS site or City approved facility for recycling. Contractor shall be responsible for recovering/disposing reffridgerants as required by law as well as unit decontamination in a contained area. The Contractor shall also be responsible for the transportation of eligible White Goods from the City approved DMS to a City approved facility for recycling.		\$ Per Unit

	AC Units, Refridgerators and freezers requiring refridgerant recovery and decontamination		\$135.00
	Washers, dryers, stoves, ovens, and hot water heaters		\$70.00
	<b>Total</b>		
12	Household Hazardous Waste Removal, Transport, and Disposal (based on Section 2.3.10) Work consists of the collection, transportation, and disposal of household hazardous waste from the ROW to a City approved permitted hazardous waste facility or MSW type I landfill.		<b>\$ Per Pound</b>
			\$15.00
13	E-Waste Removal (based on Section 2.3.11) Work consists of the recovery and disposal of televisions, computers, computer monitors, and microwaves unless otherwise specified in writing by the City.		<b>\$ Per Unit</b>
			\$35.00
14	Abandoned Vehicle Removal (based on Section 2.3.12) Work consists of the removal and transport of eligible abandoned vehicles.		<b>\$ Per Unit</b>
	Passenger Car		\$350.00
	Single Axle		\$350.00
	Double Axle		\$350.00
15	Dead Animal Carcasses (based on Section 2.3.12) Work consists of the recovery and disposal of dead animal carcasses.		<b>\$ Per Pound</b>
			\$4.25



**EXHIBIT B**

**FHWA 1273 - REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**SEE NEXT PAGE**

**SCHEDULE 2 - UNIT RATE PRICE SCHEDULE** Reference to RFP Scope of Services Item  
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	AC Units, Refridgerators and freezers requiring refridgerant recovery and decontamination		\$135.00
	Washers, dryers, stoves, ovens, and hot water heaters		\$70.00
	<b>Total</b>		
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14	Abandoned Vehicle Removal (based on Section 2.3.12) Work consists of the removal and transport of eligible abandoned vehicles.	<b>Estimated Quantity</b>	<b>\$ Per Unit</b>
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	Single Axle		\$350.00
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15	Dead Animal Carcasses (based on Section 2.3.12) Work consists of the recovery and disposal of dead animal carcasses.	<b>Estimated Quantity</b>	<b>\$ Per Pound</b>
			\$4.25



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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

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

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

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

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

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

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

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

**6. Training and Promotion:**

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



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

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

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

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

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

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

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

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

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

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of

subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

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

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

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

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

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

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

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

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

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

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

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



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

### III. NONSEGREGATED FACILITIES

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

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

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a

prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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



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

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

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

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

#### 2. Withholding

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

#### 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security

number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/Wh347inslr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.



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

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

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

#### 4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

rate specified in the applicable wage determination.

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

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

b. Trainees (programs of the USDOL).

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

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

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

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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



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

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

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

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

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

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

10. **Certification of eligibility.**

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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.

#### 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



contracts and to all related subcontracts.

#### VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

#### VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction

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

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

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

#### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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



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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

##### 1. Instructions for Certification – First Tier Participants:

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

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

c. The certification in this clause is a material representation

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

**2. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal,"

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

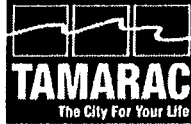
e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from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

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

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

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

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



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

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**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.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

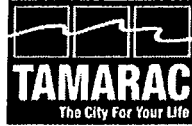
1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

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

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



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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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

**AGREEMENT****BETWEEN THE CITY OF TAMARAC****AND****CROWDERGULF JOINT VENTURE, INC.**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of by and between the City of Tamarac, a municipal corporation with principal offices located at 7525 N.W. 88th Ave., Tamarac, FL 33321 (the "CITY") and CrowderGulf Joint Venture, Inc., a Florida corporation with principal offices located at 5435 Business Parkway, Theodore, Alabama 36582 (the "Contractor") to provide Stand-by, Pre-Event Disaster Debris Removal and Disposal Services as the secondary contractor.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

**1) The Contract Documents**

The contract documents shall consist of this Agreement, Request for Proposal Document No. 13-10R, titled "Disaster Debris Removal and Disposal Services", and including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda, the Contractor's bid/proposal included herein, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between Request for Proposal No. 13-10R, Disaster Debris Removal and Disposal Services, as issued by the City, and the Contractor's Proposal, dated May 14, 2013, Request for Proposal No. 13-10R, Disaster Debris Removal and Disposal Services as issued by the City shall take precedence over the Contractor's Proposal. Furthermore, in the event of a conflict between this document and any other contract documents, this Agreement shall prevail.

**2) Contract Term**

The successful contractor shall be awarded a contract for three (3) years with the option to renew the contract for two (2) additional two (2) year periods. Options for renewal will only be exercised upon mutual written agreement. Unit prices will remain firm for the first year and may be adjusted according to the Consumer Price Index (CPI) for each subsequent year.

**3) The Work**

3.1. The Contractor shall perform all work for the City required by the contract documents as set forth below:

3.1.1 Contractor shall furnish all labor, materials, and equipment necessary to provide Disaster Debris Removal and Disposal Services as required by the City. Contractor shall adhere to all requirements of the Statement of Work for RFP 13-10R as incorporated in the Contract Documents as delineated in Section 1 of this Agreement.

3.1.2 Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's



expense.

- 3.1.3 Contractor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
- 3.1.4 Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.
- 3.1.5 Bonding: Contractor shall provide the City with a Performance and Payment Bond in the amount of \$1,000,000 or 100% of the contract value, whichever is greater, within three (3) calendar days of a written Notice to Proceed by City. Once activated, the Payment and Performance Bonds shall be in force for a period of not less than one (1) year from the date of original execution by the Bond Surety."

**4) Insurance**

- 4.1. Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid or proposal document or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager Certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.
- 4.2. Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

**5) Time of Commencement and Substantial Completion**

- 5.1. The work to be performed under this Agreement shall be commenced after City execution of the Agreement and upon issuance of a written Notice to Proceed by the City as the result of an event requiring Contractor's services. The Contractor shall begin preparation for mobilization immediately after receiving the Notice to Proceed and be fully operational within forty eight (48) hours, or as specifically directed by the City. If emergency road clearance is needed, Contractor shall have crews working within twenty-four (24) hours.
- 5.2. The work, including site restoration prior to close-out shall be completed within thirty (30) calendar days after receiving notice from the CITY that the last load of debris has been delivered.



**6) Contract Sum**

Pricing for this Agreement shall be in accordance with the schedule of unit prices attached hereto as Appendix A.

**7) Payments**

Payment will be made monthly for work that has been completed, inspected and properly invoiced. Invoices must bear the project name, project number, proposal number and purchase order number. Contractor shall submit invoices for no more than 30 day increments. City has up to thirty (30) days to review, approve and pay all invoices after receipt. All necessary Releases of Liens and Affidavits shall be processed before the warranty period begins. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218, as well as the Request for Proposal 13-10R, "Disaster Debris Removal and Disposal Services", "Technical Specifications", Section G "Invoices".

**8) Waiver of Liens**

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release City from all claims of liability by Contractor in connection with the agreement.

**9) Warranty**

Contractor warrants the work against defect for a period of one (1) year from the date of completion of work. In the event that defect occurs during this time, Contractor shall perform such steps as required to remedy the defects. Contractor shall be responsible for any damages caused by defect to affected area or to interior structure. The one (1) year warranty period does not begin until substantial completion of the entire project, and the subsequent release of any Performance or Payment Bonds, which may be required by the original bid document.

**10) Indemnification**

10.1. The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

10.2. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

i. The Contractor 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.

- ii. 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 Contractor under the indemnification agreement

10.3. Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 786.28, as amended from time to time

#### **11) Non-Discrimination & Equal Opportunity Employment**

During the performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. The Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that Sub-contractors, if any, will be made aware of and will comply with this nondiscrimination clause.

#### **12) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

#### **13) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

#### **14) Notice**



Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

CITY

City Manager  
City of Tamarac  
7525 N.W. 88th Avenue  
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308

CONTRACTOR

Mr. John Ramsay, President  
CrowderGulf Joint Venture, Inc.  
5435 Business Parkway  
Theodore, AL 36582  
(800) 992-6207 fax: (251) 459-7433  
[jramsay@crowdergulf.com](mailto:jramsay@crowdergulf.com)

**15) Termination**

**15.1. Termination for Convenience:** This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Contractor for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

**15.2. Default by Contractor:** In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

**16) Uncontrollable Forces**

**16.1.** Notwithstanding the specific events for which services are to be provided under this Agreement, neither the City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.





16.2. Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**17) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**18) Venue**

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

**19) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**20) Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**21) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

**18) No Construction Against Drafting Party**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.



City of Tamarac

Purchasing & Contracts Division

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its President, duly authorized to execute same.

**CITY OF TAMARAC**

\_\_\_\_\_  
Beth Talabisco, Mayor

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Michael C. Cernech, City Manager

\_\_\_\_\_  
Pat Teufel, CMC  
Interim City Clerk

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Approved as to form and legal sufficiency:

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
Attorney

ATTEST:

\_\_\_\_\_  
Company

\_\_\_\_\_  
(Corporate Secretary)

**CROWDERGULF JOINT VENTURE, INC.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of President

**Tony Dees**

\_\_\_\_\_  
Type/Print Name of Corporate Secy.

(CORPORATE SEAL)

**John Ramsay**

\_\_\_\_\_  
Type/Print Name of President

**06-10-13**

\_\_\_\_\_  
Date



City of Tamarac

Purchasing & Contracts Division

CORPORATE ACKNOWLEDGEMENT

STATE OF Alabama :  
COUNTY OF Mobile :SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared John Ramsay, President, of CrowderGulf Joint Venture, Inc., a Florida Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

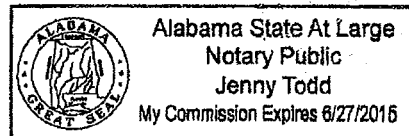
WITNESS my hand and official seal this day of June 10, 2013.

Jenny Todd  
Signature of Notary Public  
State of Alabama  
Jenny Todd  
Print, Type or Stamp  
Name of Notary Public

☒ Personally known to me or  
☐ Produced Identification

\_\_\_\_\_  
Type of I.D. Produced

☐ DID take an oath, or  
☐ DID NOT take an  
oath.





City of Tamarac

Purchasing & Contracts Division

**EXHIBIT A**

**SCHEDULE OF VALUES**

**SEE NEXT PAGE**

# **CrowderGulf 2013 Pricing for Tamarac, FL**

## **SCHEDULE 2 - UNIT RATE PRICE SCHEDULE - REVISED 5/6/2013**

Reference to RFP Scope of Services Items 2 to 11. If a Vendor elects to "No Bid" individual service offerings their proposal may be considered non-responsive by the City. Items 12 - 15 are Ancillary Services. Vendors are requested to provide a cost for ancillary items; however these costs will not be used for evaluative purposes.

<b>2 Vegetative Debris Removal</b> (based on Section 2.3.2)		\$ Per Cubic Yard	
Work consists of the collection and transportation of eligible vegetative debris on the ROW or public property to a City approved debris management site (DMS) or City approved final disposal site. (The proposed rate and quantities for this section includes Removal of Debris from City Parks & Facilities (Section 2.3.4).			
Removing debris from public property and ROW and hauling to DMS		\$ 7.50	
<b>3 C&amp;D Debris Removal</b> (based on Section 2.3.3)		\$ Per Cubic Yard	
Work consists of the collection and transportation of eligible C&D on the ROW or public property to a City approved final disposal site.			
Removing C&D debris from ROW or public property and hauling to DMS		\$ 7.80	
<b>3 Debris Removal from Canals / Waterways</b> (based on Section 2.3.5)		\$ Per Cubic Yard	
Work consists of the collection and transportation of eligible debris from City maintained canals and waterways to a City approved final disposal site.			
Removing debris from city maintained canals/waterways and hauling to DMS		\$ 62.00	
<b>6 DMS Operation and Reduction Through Grinding</b> (based on Section 2.3.6)		\$ Per Cubic Yard	
Work consists of managing and operating DMS for acceptance and reduction of eligible vegetative disaster related debris through grinding. The costs associated with acquiring, preparing, leasing, renting, operating, and remediating land used as DMS is reflected in this bid.			
		\$ 2.70	
<b>8 Haul-out of Reduced Debris to a City Approved Final Disposal Site</b> (based on Section 2.3.2)		\$ Per Cubic Yard	
Work consists of loading and transporting reduced eligible disaster related debris at a City approved DMS to a City designated final disposal site.			
		\$ 5.25	
<b>9 Removal of Hazardous Trees and Limbs</b> (based on Section 2.3.8)		\$ Per Tree	
Work consists of removing eligible hazardous trees or limbs and placing them on the safest possible location on the City ROW for collection under the terms and conditions of Scope of Services Item 2, Vegetative Debris Removal.			
6 inch to 12.99 inch diameter		\$ 25.00	
13 inch to 24.99 inch diameter		\$ 75.00	
25 inch to 36.99 inch diameter		\$ 125.00	
37 inch to 48.99 inch diameter		\$ 250.00	
49 inch and larger diameter		\$ 400.00	
Hanger Removal (per Tree)		\$ 70.00	
<b>10 Removal of Hazardous Stumps</b> (based on Section 2.3.9)		\$ Per Stump	
Work consists of removing eligible hazardous stumps and transporting resulting debris from the ROW to a City approved DMS. Rate includes removal, backfill of stump hole, reduction, and final disposal.			
24.1 inch to 36.99 inch diameter		\$ 150.00	
37 inch to 48.99 inch diameter		\$ 200.00	
49 inch and larger diameter		\$ 300.00	
<b>11 ROW White Goods Debris Removal</b> (based on Section 2.3.10)		\$ Per Unit	
Work consists of the removal of eligible White Goods from the ROW to a City approved DMS site or City approved facility for recycling. Contractor shall be responsible for recovering/disposing refrigerants as required by law as well as unit decontamination in a contained area. The Contractor shall also be responsible for the transportation of eligible White Goods from the City approved DMS to a City approved facility for recycling.			
AC Units, Refrigerators and freezers requiring refrigerant recovery and decontamination		\$ 40.00	
Washers, dryers, stoves, ovens, and hot water heaters		\$ 25.00	

**SCHEDULE 2 (REVISED) - UNIT RATE PRICE SCHEDULE CONTINUED**

Ancillary Options - The Following Items are not Included in the Price Evaluation			
<b>12 Household Hazardous Waste Removal, Transport, and Disposal</b> (based on Section 2.2.11) Work consists of the collection, transportation, and disposal of household hazardous waste from the ROW to a City approved permitted hazardous waste facility or MSW type I landfill.		\$ Per Pound	
		\$ 6.00	
<b>13 E-Waste Removal</b> (based on Section 2.2.12) Work consists of the recovery and disposal of televisions, computers, computer monitors, and microwaves unless otherwise specified in writing by the City.		\$ Per Unit	
		\$ 35.00	
<b>14 Abandoned Vehicle Removal</b> (based on Section 2.2.13) Work consists of the removal and transport of eligible abandoned vehicles.		\$ Per Unit	
Passenger Car		\$ 225.00	
Single Axle		\$ 225.00	
Double Axle		\$ 250.00	
<b>15 Dead Animal Carcasses</b> (based on Section 2.2.14) Work consists of the recovery and disposal of dead animal carcasses.		\$ Per Pound	
		\$ 0.50	



City of Tamarac

Purchasing & Contracts Division

**EXHIBIT B**

**FHWA 1273 - REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**SEE NEXT PAGE**



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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

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





*City of Tamarac*

*Purchasing & Contracts Division*

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



*City of Tamarac*

*Purchasing & Contracts Division*

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



*City of Tamarac*

*Purchasing & Contracts Division*

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

**III. NONSEGREGATED FACILITIES**

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

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

**IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

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

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

**1. Minimum wages**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a

prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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



#### City of Tamarac

#### Purchasing & Contracts Division

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

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

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

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

#### 2. Withholding

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

#### 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security

number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.



#### City of Tamarac

#### Purchasing & Contracts Division

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

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

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

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

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

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

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

rate specified in the applicable wage determination.

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

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

##### b. Trainees (programs of the USDOL).

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

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

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

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

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



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

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

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

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

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

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.

10. Certification of eligibility. 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.

11. Certification of eligibility.

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

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

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

#### V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each

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

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

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



## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction

contracts and to all related subcontracts.

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

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

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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



#### City of Tamarac

#### Purchasing & Contracts Division

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

##### 1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation

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

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

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

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

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

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





*City of Tamarac*

*Purchasing & Contracts Division*

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

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

\*\*\*\*\*

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

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

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

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

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

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

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

**2. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal,"

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

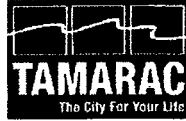
e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from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

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

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

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

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



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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

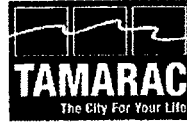
1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

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

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



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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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