



## CONTRACT

THIS CONTRACT made and entered into this 13<sup>th</sup> day of September, 2021, by and between the Town of Palm Beach, Florida, hereinafter referred to as the TOWN, and Burkhardt Construction, INC. hereinafter referred to as the Contractor, whose address is 1400 Alabama Ave, West Palm Beach, Florida 33401.

WITNESSETH, that the CONTRACTOR and the TOWN, for the considerations hereinafter named, agrees as follows:

The CONTRACTOR hereby agrees to furnish all Construction Management Services, and to perform all of the work shown on the drawings and described in the Specifications for the project entitled:

**RFQ No. 2020-20  
CONSTRUCTION MANAGER (CM) FOR TOWNWIDE OVERHEAD UTILITY  
UNDERGROUNDING PROGRAM - PHASE FIVE, NORTH AND SOUTH**

All in accordance with the requirements and provisions of the following documents which are hereby made a part of this Contract:

- A. Scope of Work as provided by Town of Palm Beach, per Section 1.1 .1 of RFQ No.2020-20
- B. Town Terms and Conditions as advertised within RFQ No. 2020-20, per Section 1.1.2
- C. Federal Terms and Conditions, per Section 1.1.3 of RFQ NO. 2020-20
- D. Insurance per RFQ No. 2020-20
- E. Burkhardt Construction, Inc. proposal dated July 14, 2021

Contract Sum Proposal

The Contractor herein proposes as noted below Construction Management Services to the Town of Palm Beach a Guaranteed Not to Exceed for \$1,919,800.00

IN WITNESS WHEREOF the parties hereto have executed this Contract the day and year first above written.

WITNESS:

Carly Brann  
Paul Rll

By:

BURKHARDT CONSTRUCTION, INC.

Contractor

Mark N. Kretsley VP  
Print Name and Title MARK N. KRETSELEY  
VICE PRESIDENT

ATTEST:

Sharon Burkhardt

Secretary

(CORPORATE SEAL)

Contract awarded by Palm Beach Town Council on August 10, 2021.

Resolution No. 91-2021

WITNESS:

[Signature]

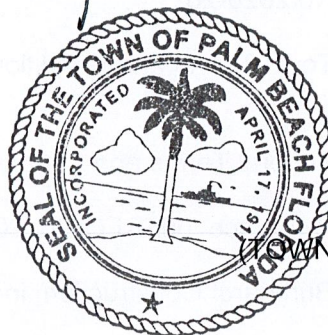
Attest:

[Signature]

TOWN OF PALM BEACH, FLORIDA

By:

[Signature]  
Kirk Blouin, Town Manager



(TOWN SEAL)

# **ATTACHMENT “A”**

## **NATURE OF SERVICES**

### **I. INTRODUCTION**

The Town of Palm Beach is soliciting proposals from a qualified Construction Manager for the TOWNWIDE OVERHEAD UTILITY UNDERGROUNDING PROGRAM –PHASE 5 North and South.

Kimley-Horn and Associates, Inc. and their project team have been retained by the Town of Palm Beach to provide design and construction phase services and documents for the Town-wide Overhead Utility Undergrounding project. A summary of the work on the project is provided below. Additional project information including a phase summary map, traffic sequencing map, and the FEMA Grant awarded to the Town are included with this solicitation.

#### **Work Summary**

The selected Construction Manager (CM) will work with the design team and Town staff to provide bidding packages for all construction work within Phase 5 North and South which will meet all requirements to receive FEMA Grant reimbursement in accordance with the terms of the grant received by the Town. The Construction Manager may team with another specialty consultant to provide Grant Administration and Consulting services if necessary. The successful CM will work directly with Town staff to successfully achieve reimbursement of 100% of the FEMA share of all construction for Phase 5. The CM will be responsible for tracking all FEMA requirements, submitting all FEMA paperwork for reimbursement, and administering the Construction of Phase 5 to in a manner that does not prohibit FEMA reimbursement for construction activities. The scope of the construction management in Phase 5 includes overseeing all work, acquiring necessary permits, and construction management and supervision of the installation Construction Contractor(s) to fully complete the construction of an overhead to underground utility conversion project consisting of existing overhead electric, telephone, and cable TV utilities within the Town of Palm Beach. The work will also include site restoration and utility adjustments. Coordination of FPL installed LED light poles and will also be included in this project. FPU will be performing gas main improvements within the limits of these phases during the undergrounding project. The CM will be required to coordinate their efforts with FPU during construction.

The CM will manage the schedule of the work performed by competitively selected installation Contractor(s) as well as coordinate the schedules and installation activities of the utility owners (FPL, AT&T, and Comcast) and monitor the progress and schedule of the work. The Construction Manager will oversee the work area to ensure the Construction Contractor(s) complete final restoration of private property areas impacted by the demolition of the existing overhead system upon final completion. The successful CM will also work require the installation Construction Contractor(s) to manage local traffic to ensure traffic maintained in accordance with the Transportation Management

Plan guidelines developed for the project. Specific Maintenance of Traffic Plans will be required to be developed by the successful CM based on their plan to execute the project. The CM will be required to conduct regular progress meetings (every two weeks) to coordinate activities and provide general updates of the work progress. Regular communication and coordination with impacted property owners will be required. Monthly community meetings may also be required to keep the community informed of the work progress.

## **II. SCOPE OF WORK**

The purpose and intent of this Request for Qualifications is to provide Construction Management Services and FEMA Grant Coordination Support for the following work:

- Provide pre-construction services which include, but are not limited to, defining value engineering opportunities to minimize project costs and work with Town staff and design consultant in the design phase;
- Develop bid packages to competitively bid the project to qualified Construction Contractor(s), according to the policies and procedures outlined in the Town's Purchasing requirements and the FEMA Grant reimbursement requirements;
- Manage the construction of the improvements that constitute the Project;
- Serve as a Lead Member of the project team and coordinate project meetings;
- Provide required records, documentation, and reporting to meet FEMA Grant Reimbursement Requirements.
- Communicate, in conjunction with the Town and Construction Contractor(s), to the residents in the project area regarding progress and coordination of the work on private property. This includes one-on-one discussions with property owners, coordination of the service conversion process, attendance at public meetings, and providing information regarding the progress of the work.
- Manage and coordinate with utility owners (Florida Power and Light, ATT and Comcast)
- Manage and coordinate as needed any underground franchise utilities owners such as: Florida Public Utilities, City of West Palm Beach Water, Palm Beach County, and Florida Department of Transportation that may have work within the CM's project limits to minimize impact to the schedule.

**Preconstruction Phase:** The successful CM shall function as an agent of the Town, shall be paid a fixed fee for services performed and shall be a part of the design team.

The successful CM shall attend selected remaining design team meetings and review construction drawings and specifications. Preconstruction services shall include developing and updating a master construction phase bar chart schedule incorporating estimated construction phase time; constructability review to identify defects, omissions, and recommendations for alternatives value engineering for all phases of the project; prepare a quantity survey and schedule of values for purpose of bidding; and prepare bid packages for the various trades; work directly with Town Purchasing to request bids from Contractor(s) in accordance with Town of Palm Beach Purchasing requirements and FEMA Grant reimbursement requirements. The successful CM shall provide written constructability analyses of the Project, including items to be addressed with the Town Consultants, accessibility, construction methods, assembly, installation, materials handling, expandability, phasing and other construction phase related activities.

**Construction Phase:** The successful CM shall function in the role as primary oversight and management of construction providing all necessary services including but not limited to the following:

- a. Prepare an overall Construction Management Plan for the project, including a procurement plan with a recommended procurement schedule to coordinate and expedite the procurement of materials and equipment by selected contractor(s);
- b. Provide oversight of the construction site and provide for the administration and supervision of the project and all contractor(s) activities;
- c. In collaboration with Construction Contractor(s) establish and maintain the construction schedule including identifying variances, delays or early completion of tasks, and the maintenance of the schedule;
- d. Develop a system for cost control;
- e. Develop and manage the pay application and change order process of Construction Contractor(s), including coordination with the design staff and Town personnel;
- f. Provide continuous monitoring and inspection of work to determine progress and conformance with design documents documenting same;
- g. Schedule and coordinate all required inspections with appropriate disciplines including the Town Inspectors;
- h. Maintain written project progress records and provide written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance of Construction Contractor(s) and schedule adherence;
- i. Participate in meetings on the project with the Town, Construction Contractor(s)

and design staff or public individuals or groups as may be directed by the Town's project manager;

- j. Work in cooperation with the Town's public outreach professionals in keeping those in the work zone informed of construction activities including specific coordination with property owners when work is to occur on private property or when any interruptions in utility service are anticipated;
- k. Develop plan, coordinate, and assist in the start-up testing and certification of any building systems and equipment, replaced and/or affected by the construction;
- l. Provide project close out coordination;
- m. Provide Certificate of Completion and all documents of record to Town staff and/or consultants for archiving;
- n. Provide all other services generally provided by Construction Manager on a project of like magnitude, scope, use, and complexity;
- o. Keep written minutes of all meetings, decisions and discussions pertaining to this project and submit copies of same to the Town and/or Town designees for archiving;
- p. Coordinate the activities and required field work of the electric, cable, telephone and/or other communications service providers as required to facilitate the project.
- q. Coordinate with third party entities which are not under the control of this project, but may be performing work within the project boundaries, such as Florida Public Utilities and private home owners.

### **III. SCHEDULED COMPLETION DATE**

The scheduled completion date will be determined at time of construction contract award. The selected Construction Manager is expected to work with any other Construction Contractor(s) working within the vicinity. The Construction Manager shall work around Town observed holidays. Schedules shall be provided indicating the start/completion dates of the overall construction project.

### **IV. DESIGN DOCUMENTS**

The preliminary design plans and technical specifications are being prepared by Kimley-Horn & Associates, Inc.

## **ATTACHMENT “B”**



**TOWN OF PALM BEACH**  
**RFQ No. 2020-20**  
**Construction Manager Services**  
**TOWNWIDE OVERHEAD UTILITY UNDERGROUNDING PROGRAM –**  
**PHASE FIVE, NORTH AND SOUTH**

**1-1 PROPOSAL SUBMISSION:** The Town must receive all proposals by **2:00 p.m., Aug 11, 2020.**

The Town only accepts online submittal of proposals through Negometrix, the eProcurement platform linked to the Town website, promoting a greener footprint. System will be closed after deadline and late submission will not be possible, nor would be accepted.

After the submission, the proposal will constitute an irrevocable offer for a period of six (6) months. Once opened, proposals become a record of the Town.

A virtual non-mandatory pre-proposal meeting will be held on July 13, 2020 at 2:00 PM, through "Go To Meeting" platform. Attendance is strongly encouraged as this will be the only forum to seek clarification from Town staff. After the award, no extra charge or compensation will be allowed as a result of failure to attend the conference and any resulting site visit.

**1-2 DEVELOPMENT COSTS:** Neither the Town nor its representatives shall be liable for any expenses incurred in connection with preparation of a response to this Request for Proposal. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the Proposer's ability to meet the requirements of the RFQ.

**1-3 CLARIFICATIONS:** Interested Proposers may submit inquiries about the proposal to the Town's Purchasing Division, by posing a question in Negometrix or by emailing Town purchasing representative at [dbasha@townofpalmbeach.com](mailto:dbasha@townofpalmbeach.com) . The Purchasing Division is located at 951 Okeechobee Road, Suite "D", West Palm Beach, FL 33401.

The Purchasing Division will receive written requests for clarification concerning the meaning or interpretations of the RFQ, **until ten (10) calendar days** prior to the submittal date.

All Proposers are expected to carefully examine the proposal documents. Any ambiguities or inconsistencies should be brought to the attention of the Town through written communication **until ten (10) calendar days** prior to the submittal date. No employee of the Town is authorized to interpret any portion of this RFQ or give information as to the requirements of the RFQ in addition to what is contained in the written RFQ document.

Town personnel are authorized only to direct the attention of prospective Proposers to various portions of the RFQ so that they may read and interpret such for themselves.

**1-4 ADDENDA:** The Town may record its response to inquiries and any supplemental instructions in the form of written addenda. The Town may provide written addenda up to **seven (7) calendar days** before the date fixed for receiving the proposals. Proposers may contact the Town to ascertain whether any addenda have been issued. Failure to do so could result in an unresponsive proposal. Any oral explanation given before the RFQ opening will not be binding.

**1-5 CONTRACT AWARDS:** The Town anticipates entering into an Agreement with the Proposer who submits the proposal judged by the Town to be most advantageous.

The Town reserves the right to accept or reject any or all proposals, with or without cause, to waive technicalities or to accept the proposal which, in its sole judgment, best serves the interest of the Town, or to award a contract to the next most qualified proposal if the successful proposal does not execute a contract within one-hundred and twenty (120) days after the award of the proposal.

The Proposer understands that this RFQ does not constitute an offer or an Agreement with the Proposer. An offer or Agreement shall not be deemed to exist and is not binding until proposals are reviewed, accepted by appointed staff, the best proposal has been identified, approved by the appropriate level of authority within the Town and executed by all parties.

Any proposal may be withdrawn until the date and time set above for the submission of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer for a period of six (6) months to provide to the Town the services set forth in this Request for Proposals.

The Town reserves the right to reject all proposals, to abandon the project and/or to solicit and re-advertise for other proposals.

**1-6 CONTRACTUAL AGREEMENT:** This RFQ shall be included and incorporated in the final award. The order of contractual precedence will be the Contract document, original Terms and Conditions, and proposal response. Any and all legal action necessary to enforce the award will be held in Palm Beach County and the contractual obligations will be interpreted according to the laws of Florida. **Any additional contract or agreement requested for consideration by the Proposer must be attached and enclosed as part of the proposal.**

The contract shall be awarded for Phase 5 North and South. Construction phase five has an anticipated duration of up to 18-24 months.

**1-7 PRESS RELEASES:** The Proposer shall obtain the prior approval of the Town Manager's Office of all news releases or other publicity pertaining to this RFQ, the service, or project to which it relates.

**1-8 FAMILIARITY WITH LAWS:** The proposer is assumed to be familiar with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the work. The failure to familiarize himself with applicable laws will in no way relieve him from responsibility.

**1-8.1 FAMILIARITY WITH CRF §200.317 – 326:** Please refer to the attachment governing CRF.

**1-9 PERMITS, TAXES, LICENSES:** The successful proposer(s) shall, at his own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under the contract. Proposers, both corporate and individual must be fully licensed and certified in the State of Florida at the time of RFQ submittal. The proposal of any Proposer that is not fully licensed and certified shall be rejected.

**1-10 INSURANCE:** INSURANCE: The contractor shall provide at its own cost and expense during the life of the contract, the following insurance coverages to the Town of Palm Beach (30) thirty business days prior to the commencement of any work. All contractors including any

independent contractors and subcontractors utilized must comply with these requirements. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates and/or policies to include premiums as determined by the Town of Palm Beach. It shall be an affirmative obligation upon the Service Provider to advise Ebix, the Town's insurance certificate management service provider, at townofpalmbeach@ebix.com; P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of this agreement/contract. The Town of Palm Beach reserves the right to require additional insurance coverages and limits based upon the particular service or change order requested by the contractor.

If the contractor maintains higher limits than the minimums shown below, the Town requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Comprehensive General Liability Insurance coverage with limits of liability not less than \$5,000,000 Each Occurrence/\$10,000,000 Aggregate or a per project aggregate of \$5,000,000. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability including Completed Operations coverage. Products & completed operations coverage to be provided for a minimum of 10 years from the date of possession by owner or completion of contract. A waiver of subrogation shall be in the favor of the Town. The contractor's General Liability coverage shall be primary and non-contributory.

For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

This insurance shall indicate on the certificate of insurance the following coverages:

- a. Premises-Operation
- b. Independent Contractor and Subcontractors
- c. Products and Completed Operations
- d. Broad Form Contractual

Contractors Pollution Liability coverage may be required depending on scope of services.

Professional Liability. must maintain professional liability or equivalent errors & omissions liability with limit of not less than \$1,000,000 per occurrence. For policies written on a claims made basis, architect or engineer shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, architect or engineer must purchase an extended reporting period rider during the life of this contract of not less than 3 years. Coverage is to apply on a primary basis.

Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident.

Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440. Should the scope of work performed by contractor qualify its employee for benefits under federal

workers' compensation statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine act), proof of appropriate federal act coverage must be provided. A waiver of subrogation must be provided.

Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the contract, the amount excess of such claims or any portion thereof may be withheld from any payment due or to become due the Contractor until such time the Contractor shall furnish such additional security covering such claims as may be determined by the Town of Palm Beach.

All policies and certificates of insurance of the Contractor shall contain the following clauses:

1. Insurers shall have no right of recovery or subrogation against the Town (including its agents, officers, past and present employees, elected officials and representatives), it, being the intention of the parties, the insurance policy in effect shall protect both parties and be the primary coverage and non-contributory for any and all losses covered by the above described insurance.
2. The clause "other insurance provisions" in a policy in which the Town is endorsed as an additional insured shall not apply to the Town, its agents, officials, past and present employees, elected officials and representatives if these provisions conflict with or otherwise limit the obligations of the contractor under the terms of this agreement.
3. Insurance companies issuing the policy or policies shall have no recourse against the Town, (including its agents, officers, past and present of any premiums or assessments under any form of policy.
4. Any and all deductibles or self-insured retentions in the above described insurance policy shall be assumed by and be for the account of and at the sole risk of the contractor. The amount of the deductible or self-insured retention must be accepted by the Town Manager.

Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

**1-11 INDEMNIFICATION:** To the fullest extent allowed by law the Contractor shall protect, defend, reimburse, indemnify and hold harmless the Town of Palm Beach, and the Town's officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of very kind and character in connection with, or arising directly or indirectly out of or related to this Contract and the Work performed hereunder. Without limiting the generality of the foregoing, Contractor's Indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Contractor agrees to investigate, respond, adjust and provide a defense for, all and any such claims, demands and actions at Contractor's sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent. Notwithstanding the foregoing, Contractor's Indemnity shall not

extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the Town, or by the Town's officers, agents and employees.

Contractor acknowledges and agrees that TOWN would not enter into a contract without this indemnification of TOWN by Contractor, and that TOWN'S entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract. Nothing in this Contract shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statute 768.28.

**1-12 SELLING, TRANSFERRING OR ASSIGNING CONTRACT:** No contract awarded for the services in this proposal shall be sold, transferred or assigned without the prior written approval of the Town.

**1-13 INDEPENDENT CONTRACTOR:** The successful proposer shall be considered an independent contractor. Professional services provided by the Proposer shall be by employees of the Proposer and subject to supervision by the Proposer, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered shall be those of the proposer.

**1-14 ADDITION OR DELETION OF SERVICES:** The Town reserves the right to add to the services specified, or to delete any portion of the scope of services at any time.

**1-15 RECORDS:** The Proposer(s) shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices. The Proposer(s) shall maintain and make available such records and files for the duration of the contract and retain them for a period of three (3) years beyond the last day of the contract term.

**1-16 INVOICES:** The Proposer may submit invoices at the completion and approval of each task or for partial completion of each task on a pro rata basis. However, requests for payment shall not be made more frequently than on a monthly basis. Each invoice shall designate the nature of work performed and be accompanied by records fully detailing the amounts stated on the invoice. Invoice payment shall be subject to the satisfactory completion and acceptance of the work following verification by Town personnel. Invoices shall be paid by the Town within thirty (30) days of receipt of the invoice, except for items questioned. The Town shall notify the Proposer of any items questioned. The Proposer(s) shall prepare verification data for the amount claimed and provide complete cooperation during such investigation of any areas in the invoice subject to question.

**1-17 TERMINATION BY THE OWNER FOR CAUSE:**

The Town may terminate this Contract in the event:

- a. Contractor fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified in this Contract;
- b. Contractor fails or refuses to prosecute the Work on any severable part, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with this Contract;

- c. Contractor fails to complete the Work within the time specified in this Contract;
- d. Contractor fails to deliver the supplies or perform the services required of the Contractor under this Contract within the time specified in this Contract;
- e. Contractor fails or refuses to provide sufficient properly skilled workmen or tradesmen;
- f. Contractor refused or fails to supply materials, equipment or services meeting the requirements of this Contract;
- g. Contractor fails to make payments for materials, labor or services to subcontractors, sub subcontractors, suppliers or material men of any tier in accordance with such agreements that may exist among them;
- h. Contractor violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;
- i. Contractor materially breaches any of the provisions of this Contract.

When any single or combination of the above causes exist such cause(s) have not been cured after seven (7) days written demand by the Town, the Town may, with full reservation of, and without prejudice to any other right or remedy the Town may have, upon giving Contractor and the surety five (5) days written notice, terminate the Contract. Thereupon the Town shall immediately be entitled to possession of the worksite and all supplies, materials, equipment thereon and to finish the Work by reasonable means the Town shall decide in its discretion. No payments shall be due the Contractor until the Work is fully and finally completed. Contractor and Contractor's surety shall be charged with all costs and expenses of completing the Work (the "Cost to Complete") including without limitation: costs of repairing, replacing or re-mediating improperly performed work; completing portions of the Work left undone on the Contractor's termination; architectural, engineering and other professional fees and costs incurred as a result of Contractor's termination and in connection with completing the Work; liquidated damages at the rate specified herein until Completion is achieved; any other loss, claim or damage incurred by the Town by reason of Contractor's default. If the unpaid portion of the Contractor's Bid (the "Unpaid Bid Amount") is greater than the Cost to Complete, the Cost to Complete shall be subtracted from the Unpaid Bid Amount and the difference shall be paid to Contractor within sixty (60) days from completion of the Work. If the Cost to Complete exceeds the Unpaid Bid Amount, the Unpaid Bid Amount shall be subtracted from the cost to complete and Contractor shall be indebted to and shall pay to the Town that difference. The rights and remedies reserved to the Town in this paragraph are without waiver of and are in addition to any other rights and remedies provided by law or under this Contract to the Town.

#### **1-18 TERMINATION FOR CONVENIENCE:**

- A. The Town of Palm Beach may terminate performance of work under this contract in whole or in part (the "Work Terminated") if the Town determines that such termination is in the Town's best interest. The Town shall terminate by delivering to the Contractor a Notice of Termination, specifying the extent of the Work Terminated and the effective date.
- B. After receipt of a Notice of Termination, a Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - 1. Stop work as specified in the notice.
  - 2. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete any portion of this Contract not encompassed in the Work Terminated.

3. Terminate all subcontracts to the extent they relate to the Work Terminated. To the fullest extent practicable, cancel all outstanding purchase orders, contracts and delivery of materials, supplies and equipment related to the Work Terminated.
  4. If requested by the Town in writing, assign to the Town, all right, title and interest of the Contractor under the subcontracts terminated. Such Assignment shall not include assumption of Contractor's obligations or liabilities under a subcontract. The Town shall have the right (but not the obligation) to assume the Contractor's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts shall constitute the Town's assumption of Contractor's or other obligations under any such subcontract absent a written document executed by the Town and the subcontractor in which the Town expressly acknowledges an assumption of Contractor's obligations, and then only to the extent specified. In no event will the Town assume any obligation of the Contractor under the subcontracts that arise out of or relate to Contractor's default prior to such assignment.
  5. With the approval of the Purchasing Agent, settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.
  6. As directed by the Town, transfer title and deliver to the Town (a) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the Work Terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the Work Terminated had been completed, would be required to be furnished to the Town.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the Town may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Town has or may acquire an interest.
- C. The Early Termination Claim shall be strictly limited to payment for those portions of the Work, including Contractor's reasonable profit therefore, properly performed prior to the Town's Termination for Convenience, and for work performed by Contractor under subparagraph B.8 above for protection and preservation of the property described therein. The Early Termination Claim shall not include, and Contractor shall not be entitled to claim or recover, Contractor's other direct or indirect costs, losses or damage of whatsoever nature by reason of the Early Termination including, but without limitation:
1. Lost profit for Work not to be performed by Contractor by reason of the Town's Termination for Convenience;
  2. The cost of the Work not to be performed by Contractor by reason of the Town's Termination for Convenience;
  3. Contractor's demobilization costs;
  4. Home office overhead;
  5. Effect on other contracts and subcontracts including without limitation, those with subcontractors, sub subcontractors, suppliers and material men of any tier or any claims by them arising out of or relating to the impact of the Termination for Convenience on their contracted relations;
  6. Lost opportunities or other actual/prospective contracts;
  7. Lower or lost productivity;
  8. Costs or damages claimed by subcontractors, sub subcontractors, material men

or suppliers of any tier arising or in any way related to their respective contracts with Contractor or one another, or arising or related in any manner to the Termination for Convenience.

The Town's Termination for Convenience shall be without waiver or prejudice to, all of the Town's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the Town may have against Contractor, or Contractor's subcontractors, material men and suppliers of any tier, or any other person or entity at the time of Early Termination, or arising thereafter.

Contractor hereby acknowledges acceptance of the risk and cost of the foregoing and acknowledges and agrees to the foregoing limitation on Contractor's claims or damages arising out of, or relating to, an Early Termination by the Town.

- D. After termination, the Contractor shall submit an Early Termination Claim to the Town. The Contractor shall submit the Early Termination Claim, but no later than 60 days from the effective date of termination unless extended in writing by the Town. If the Contractor fails to submit the Early Termination Claim within the time allowed, the Town may determine, on the basis of information available, the amount, if any, due the Contractor because of the Early Termination and shall pay the amount so determined to Contractor.
- E. Subject to Paragraph D. above, the Contractor and the Town may agree upon the whole or any part of the amount to be paid because of the Early Termination. However, this amount may not exceed the total price as reduced by the amount of payments previously made and the contract price of work not terminated. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.
- F. If the Contractor and the Town fail to agree on the payment because of Early Termination of work, the Town shall pay the Contractor the amounts, if any, determined by the Town to be due the Contractor as a result of the terminated work.
- G. If the termination is partial, the Contractor may file a proposal with the Town for an equitable adjustment of the price of the continued portion of the contract.

#### **1-19 TERMINATION BY THE CONTRACTOR:**

In the event the Town has not made a Progress Payment or the Final Payment within the time stated in the Contract Documents, the Contractor may terminate this Contract if the Town fails or refuses to make such payment after ten (10) days written notice to the Engineer and the Town.

If, through any cause, the Proposer(s) shall fail to fulfill in a timely and proper manner, its obligations under the contract, or if the Proposer(s) shall violate any of the provisions of the contract, the Town may upon written notice to the Proposer(s) terminate the right of the Proposer(s) to proceed under the contract and may hold the Proposer(s) liable for any damages caused to the Town by reason of such default and termination. In the event of such termination, any completed services performed by the Proposer(s) under the contract shall, at the option of the Town, become the Town's property and the Proposer(s) shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Town. The Proposer(s), however, shall not thereby be relieved of liability to the Town for damages sustained by the Town by reason of any breach of the contract by the Proposer(s), and the Town may withhold any payments to



the Proposer(s) for the purpose of setoff until such time as the amount of damages due the Town from the Proposer(s) is determined. The Proposer(s) shall not be held liable for damages solely for reasons of delay if the delay is due to causes beyond its control and without its fault or negligence, but this shall not prevent the Town from terminating the contract because of such delay.

**1-20 PROPOSAL CONTENTS:** All material submitted becomes the property of the Town of Palm Beach. The Town has the right to use any or all ideas presented in any reply to this RFQ. Selection or rejection of the proposal does not affect this right.

**1-21 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, age, creed, national origin, or disability by the Proposer(s) in the operations conducted under the contract.

**1-22 DRUG-FREE WORKPLACE:** Preference shall be given to businesses with Drug-Free Work Place (DFW) programs. Whenever two or more proposals which are equal with respect to price, quality, and service are received by the TOWN for the procurement of commodities or contractual services, a proposal received from a business that completes the attached DFW form certifying that it is a DFW shall be given preference in the award process.

**1-23 PALM BEACH COUNTY INSPECTOR GENERAL:** The contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of any contracts resulting from this solicitation, and in furtherance thereof may demand and obtain records and testimony from the contractor and its subcontractors and lower tier subcontractors. The contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the contractor or its subcontractors or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the municipality to be a material breach of this contract justifying its termination.

**1-24 PUBLIC ENTITY CRIMES:** In accordance with Florida Statute 287.133, no award will be made to any person or affiliate identified on the Department of Management Services' "Convicted Vendor List". This list is defined as consisting of persons and affiliates who are disqualified from public contracting and the purchasing process because they have been found guilty of a public entity crime. A "person" or "affiliate" includes any natural person or any entity, including predecessor or successor entities or an entity under the control of any natural person who is active in its management and who has been convicted of a public entity crime.

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

By signing and submitting the Bid documents, the submitting firm, i.e. "person" or "affiliate", attests that they have not been placed on the "Convicted Vendor List" or have been found guilty of a public entity crime.

**1-25 NON-COLLUSION:** Proposer certifies that their Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Proposal for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

**1-26 CONFLICT OF INTEREST:** The award hereunder is subject to provisions of State Statutes, Palm Beach County and Town Ordinances. All Proposers must disclose with their Proposal the name of any officer, director, or agent who is also an employee of the Town of Palm Beach. Further, all Proposers must disclose the name of any Town employee who owns, directly or indirectly, an interest in the Proposer's firm or any of its branches.

**1-27 CODE OF ETHICS:** If any Proposer violates or is a party to a violation of the code of ethics of the Town of Palm Beach, Palm Beach County or the State of Florida with respect to this proposal, such Proposer may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and shall be further disqualified from submitting any future proposals for work, goods or services for the Town of Palm Beach. The link for further information regarding the Palm Beach County Commission on Ethics is: <http://www.palmbeachcountyyethics.com/ordinances-codes.htm>.

**1-28 LOBBYING PROHIBITED:** Proposers are not to contact or lobby any Town personnel related or involved with this Request for Qualifications.

All oral or written inquiries are to be directed to the Purchasing Division as instructed herein. Any violation of this condition may result in rejection and/or disqualification of the Proposer.

Refer to Palm Beach County Registration Ordinance – Effective April 2, 2012 for further information: <http://www.palmbeachcountyyethics.com/ordinances-codes.htm>.

**1-29 CONE OF SILENCE:** The Cone of Silence is a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid or any other competitive solicitation between:

(1) Any person or person's representative seeking an award from such competitive solicitation; and

(2) Any County commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.

For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, proposer, lobbyist, or any actual or potential subcontractor or proposer of the person.

The cone of silence shall be in effect as of the issuance of this RFQ and until award is made by Town Council. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice

of cone of silence requirements and refer to this article.

The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

For further information refer to <http://www.palmbeachcountyethics.com/ordinances-codes.htm> - Palm Beach County Registration Ordinance – Effective April 2, 2012.

**1-30 SCRUTINIZED COMPANIES:** The Town, entering into a contract for goods or services of \$1 million or more, entered into or renewed on or after July 1, 2011, can terminate such contract at the option of the Town if the firm awarded the contract is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

**1-31 PUBLIC RECORDS LAW AND EXEMPTIONS:** Upon receipt, all response submittals become “public records” and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Any firm that intends to assert any materials to be exempted from public disclosure under Chapter 119, Florida Statutes must submit the documents(s) in a separate bound document labeled “Name of Firm, Attachment to Proposal Package, RFQ# - Confidential Matter”. The firm must identify the specific statute that authorizes the exemption from the Public Records Law. Failure to provide this information at the time of submittal may result in a recommendation by the Purchasing Manager that the response is non-responsive.

Any claim of confidentiality on materials that the firm asserts to be exempt and placed elsewhere in the submittal will be considered waived by the firm upon submission, effective after opening.

Please be aware that submitting confidential material may impact full discussion of your submittal by the Selection Committee because the Selection Committee will be unable to talk about the details of the confidential material(s) at the public Selection Committee meeting. Please note that the financial statement exemption provided for in Section 119.071(1) c, Florida Statutes only applies to submittals in response to a solicitation for a “public works” project.

**PUBLIC RECORDS LAW:** In accordance with Florida Statutes 119.0701, the contractor shall comply with public records laws, specifically to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the

public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

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

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

A copy of Section 119.0701, Florida Statutes, has been provided to the contractor (attached).

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

Town Clerk, or designee  
Phone 561-838-5416  
Email [records@townofpalmbeach.com](mailto:records@townofpalmbeach.com)

## **ATTACHMENT “C”**



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
Governor

Jared Moskowitz  
Director

December 11, 2019

Steve Stern  
Underground Utilities Project Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480

**Re: Town of Palm Beach, Town Utility Undergrounding Project, Utility  
Protective Measures**

Dear Steve Stern:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract number H0374 between Town of Palm Beach and the Division of Emergency Management.

Please forward all Requests for Reimbursement (Attachment D) to the Division of Emergency Management at the following address:

Debbie Williams, Project Manager  
Florida Division of Emergency Management  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Debbie Williams at (850) 815-4522.

Respectfully,

Miles E. Anderson  
Bureau Chief, Mitigation  
State Hazard Mitigation Officer

MEA: km/a  
Enclosure

Agreement Number: H0374  
Project Number: 4337-278-R

#### FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a "subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract."

As defined by 2 C.F.R. §200.74, "pass-through entity" means "a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program."

As defined by 2 C.F.R. §200.93, "Sub-Recipient" means "a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program."

As defined by 2 C.F.R. §200.38, "Federal award" means "Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity."

As defined by 2 C.F.R. §200.92, "subaward" means "an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity."

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	Town of Palm Beach
Sub-Recipient's unique entity identifier:	596000402
Federal Award Identification Number (FAIN):	FEMA-DR-4337-FL
Federal Award Date:	September 27, 2019
Subaward Period of Performance Start and End Date:	Upon execution through March 31, 2022
Amount of Federal Funds Obligated by this Agreement:	\$8,465,355.00
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	\$8,465,355.00
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	\$8,465,355.00
Federal award project description (see FFATA):	Utility Protective Measures
Name of Federal awarding agency:	Federal Emergency Management Agency
Name of pass-through entity:	FL Division of Emergency Management
Contact information for the pass-through entity:	Debbie.Williams@em.myflorida.com
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	97.039 Hazard Mitigation Grant Program
Whether the award is R&D:	N/A
Indirect cost rate for the Federal award:	N/A

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **Town of Palm Beach**, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;
- B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,
- C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

- a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:
  - i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.
  - ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.
  - iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.
  - iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
  - v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.



vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Debbie Williams  
Project Manager  
Florida Division of Emergency Management  
Bureau of Mitigation  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399  
Telephone: 850-815-4522  
Email: [Debbie.Williams@em.myflorida.com](mailto:Debbie.Williams@em.myflorida.com)

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Steve Stern  
Underground Utilities Project Manager  
360 South County Road  
Palm Beach, FL 33480  
Telephone: 561-227-6307  
Email: [sstern@townofpalmbeach.com](mailto:sstern@townofpalmbeach.com)

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2022**, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$8,465,355.00**.
- d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any

false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient "relate financial data to performance accomplishments of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,
- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.
- i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.
- j. As defined by 2 C.F.R. §200.53, the term "improper payment" means or includes:
  - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
  - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) years from the date of

submission of the final expenditure report. The following are the only exceptions to the five (5) year requirement:

- i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
  - ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
  - iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.
  - iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.
  - v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
  - vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
- d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.
- e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.
- f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.
- g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three,

basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

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

**RECORDS AT: (850) 815-4156, [Records@em.myflorida.com](mailto:Records@em.myflorida.com), or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.**

**(11) AUDITS**

- a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.
- b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."
- c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."
- d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.
- e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient's fiscal year.
- f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle\_Audit@em.myflorida.com

OR

Office of the Inspector General  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

- g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle\_Audit@em.myflorida.com

OR

Office of the Inspector General  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

#### (12) REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

#### (13) MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the



Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14) LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;
- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:
  - i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
  - ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
  - iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
  - iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17) TERMINATION

- a. The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty calendar day's prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

#### (18) PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a

competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division's review and comments shall not constitute an approval of the solicitation. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
  - ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.
- e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:
- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
  - ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.
- f. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless

against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;
- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. "[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321

("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
  - i. Exhibit 1 - Funding Sources
  - ii. Attachment A – Budget and Scope of Work
  - iii. Attachment B – Program Statutes and Regulations
  - iv. Attachment C – Statement of Assurances
  - v. Attachment D – Request for Advance or Reimbursement
  - vi. Attachment E – Justification of Advance Payment
  - vii. Attachment F – Quarterly Report Form
  - viii. Attachment G – Warranties and Representations
  - ix. Attachment H – Certification Regarding Debarment
  - x. Attachment I – Federal Funding Accountability and Transparency Act
  - xi. Attachment J – Mandatory Contract Provisions

(20) PAYMENTS

- a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.
- b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.
- c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division

to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21) REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management  
Cashier  
2555 Shumard Oak Boulevard  
Tallahassee FL 32399-2100

b. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or

consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under 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;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

**h. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.**

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

k. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions



contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

l. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

m. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

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

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. 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 Section 1352, Title 31, U.S. Code. 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.

**(24) COPYRIGHT, PATENT AND TRADEMARK**

**EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.**

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-

paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

**(25) LEGAL AUTHORIZATION**

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

**(26) EQUAL OPPORTUNITY EMPLOYMENT**

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job

functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

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

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

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

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

viii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

#### (27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

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

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

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

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30) SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

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

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

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

(31) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

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

(32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

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

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33) ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**SUB-RECIPIENT: Town of Palm Beach**

By: 

Name and title: KIRK BLOWN, TOWN MANAGER

Date: 11/27/19

FID# 59-6000402

**STATE OF FLORIDA**

**DIVISION OF EMERGENCY MANAGEMENT**

By: 

Name and Title: Miles E. Anderson, for

Date: 12-17-2019

## EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

### Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: \$8,465,355.00

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

### Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
  - Utility Protective Measures  
(Other projects that reduce future disaster losses)
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

## Attachment A

### Budget and Scope of Work

#### **STATEMENT OF PURPOSE:**

The purpose of this Scope of Work is to provide protective measures to the utility infrastructure in Town of Palm Beach, Palm Beach County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) DR-4337-278-R, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, Town of Palm Beach, agrees to administer and complete the project per scope of work as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations and Codes.

#### **PROJECT OVERVIEW:**

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to bury overhead utility infrastructure, consisting of electrical, telephone, and cable communications in the north area of town that consists of properties between Country Club Road south to Southland Road and in the south area of town that consists of properties between South Lake Drive and Hibiscus Avenue, from Peruvian Avenue to Royal Palm Way, and the properties between the Intracoastal Waterway and the Atlantic Ocean, from Royal Palm Way to Seaspray Avenue, in the Town of Palm Beach, Florida, 33480.

The HMGP project scope of work proposes to remove existing utilities poles and overhead lines and place them underground. The Town of Palm Beach is predominantly served with electric and communications services through a network of overhead wires mounted to an estimated 2,000 wood or concrete poles. There are approximately 37 pole-miles of overhead infrastructure within the Town limits. The removal of utility poles and overhead lines provides increased survivability for wind storms and improved safety benefits by reducing the potential of hazardous conditions occurring in the event of natural disasters. Severe wind events can cause poles and/or overhead lines to fall and impact property and possibly cause live electric lines to be exposed. Downed electric lines and vegetation overgrowth onto electric lines pose a potential threat of property fire and injury due to electric shock and can restrict ingress and egress of residents and emergency services.

The project shall provide protection against 170 MPH winds or the wind speed protection and impact requirements indicated by the effective Florida Building Code or any other applicable code at the time permits are issued. Activities shall be in strict compliance with Federal, State and Local applicable Rules and Regulations.

#### **Project Locations:**

ID#	Name	Boundary Coordinates	
1)	North Area	NW	(26.741668, -80.041836)
		SW	(26.735387, -80.041889)
		NE	(26.741625, -80.035464)
		SE	(26.735344, -80.035517)
2)	South Area	NW	(26.708328, -80.043642)
		SW	(26.701659, -80.043956)
		NE	(26.708108, -80.033032)
		SE	(26.701461, -80.038783)
		E	(26.705534, -80.033083)

## **TASKS & DELIVERABLES:**

### **A) Tasks:**

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all Federal and State Laws and Regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the procurement and installation of all opening protection products in accordance with the HMGP application and associated documentation as presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable State, Local and Federal Laws and Regulations are followed and documented, as appropriate.

The project shall protect the structure from windblown debris resulting from high wind storms which shall allow the function of the structures to continue following a severe wind event.

The Sub-Recipient shall fully perform the approved project, as described in the application, in accordance with the approved scope of work indicated herein, the estimate of costs indicated herein, the allocation of funds indicated herein, and all applicable terms and conditions. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county building department (official), or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation shall include:

- a) Copy of permit(s), notice of commencement.
  - b) Local Building Official Inspection Report and Final Approval.
  - c) All Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
  - d) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

**Construction Expense:** The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

**Project Management Expenses:** The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly Reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, and plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;

- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

**B) Deliverables:**

Mitigation Activities are to provide protective measures to the utility infrastructure consisting of electrical, telephone, and cable communications in the north area of town that consists of properties between Country Club Road south to Southland Road and in the south area of town that consists of properties between South Lake Drive and Hibiscus Avenue, from Peruvian Avenue to Royal Palm Way, and the properties between the Intracoastal Waterway and the Atlantic Ocean, from Royal Palm Way to Seaspray Avenue, in the Town of Palm Beach, Florida, 33480, by removing the utility poles and overhead lines and placing them underground.

The project shall provide protection against 170 MPH winds or the wind speed protection and impact requirements indicated by the effective Florida Building Code at the time permits are issued.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

**PROJECT CONDITIONS AND REQUIREMENTS:**

**C) Engineering:**

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
- 3) The Sub-Recipient shall submit all Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
- 4) All installations shall be done in strict compliance with the Florida Building Code or Miami Dade Specifications. All materials shall be certified to meet or exceed the wind and impact standards of the current local codes.
- 5) Product Specifications documentation satisfying protection requirements for all products utilized shall be provided to the Division for closeout.

**D) Environmental:**

- 1) The Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies must be redone.
- 2) Any change, addition or supplement to the approved mitigation measure or scope of work that alters the project (including other work not funded by FEMA, but done substantially at the same time) shall require resubmission to the Division and FEMA for revaluation of compliance with the National Environmental Protection Act (NEPA) and Section 106 of the National Historic Preservation Act

(NHPA) prior to initiation of any work. Non-compliance with these requirements may jeopardize FEMA's ability to fund this project. A change in the scope of work shall be approved by the Division and FEMA in advance regardless of the budget implications.

- 3) If any ground disturbance activities occur during construction, the Sub-Recipient shall monitor ground disturbance during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.
- 4) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

**E) Programmatic:**

- 1) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 2) The Division and FEMA shall approve a change in the scope of work in advance, regardless of the impact to the budget.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 5) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Project approval is with the condition that the tasks, deliverables, and conditions be accomplished and submitted 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for Closeout.

This is FEMA project number **4337-278-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster Irma.

FEMA awarded this project on September 27, 2019; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **March 31, 2022**.

**F) Financial Consequences:**

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

**SCHEDULE OF WORK**

State/Local Contracting Process:	6 Months
Permitting:	3 Months
Bidding and Contracting:	3 Months
Construction / Installation:	15 Months
State/Local Inspections:	2 Months
Closeout:	1 Month
<b>Total Period of Performance:</b>	<b>30 Months</b>

**BUDGET****Line Item Budget\***

	<b>Project Cost</b>	<b>Federal Share</b>	<b>Non-Federal Share</b>
Materials:	\$3,390,993.00	\$1,932,866.01	\$1,458,126.99
Labor:	\$8,337,152.00	\$4,752,176.64	\$3,584,975.36
Fees:	\$3,123,355.00	\$1,780,312.35	\$1,343,042.65
<b>Initial Agreement Amount:</b>	<b>\$14,851,500.00</b>	<b>\$8,465,355.00</b>	<b>\$6,386,145.00</b>
***Contingency Funds:	\$0.00	\$0.00	\$0.00
<b>Project Total:</b>	<b>\$14,851,500.00</b>	<b>\$8,465,355.00</b>	<b>\$6,386,145.00</b>

\*Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.

\*\*\* **This project has an estimated \$0.00 in contingency funds.** Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

Project Management costs are included for this project in the amount of \$1,374,599.66.

**Funding Summary**

Federal Share:	\$8,465,355.00	(57.00%)
Non-Federal Share:	\$6,386,145.00	(43.00%)
<b>Total Project Cost:</b>	<b>\$14,851,500.00</b>	<b>(100.00%)</b>



**Attachment B**  
**Program Statutes and Regulations**

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

- (2) No new structure will be erected on property other than:
  - a. a public facility that is open on all sides and functionally related to a designed open space;
  - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (44 CFR 13(c));
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes

- (14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
- (23) 42 U.S.C. 5154a

## **Attachment C**

### **Statement of Assurances**

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
  - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
  - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
  - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

- used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
  - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
  - (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
  - (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
  - (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;
- For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at [www.fema.gov/government/grant/sfha\\_conditions.shtm](http://www.fema.gov/government/grant/sfha_conditions.shtm)
- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
  - (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
    - (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the **"Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)"** which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Sub-recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all

- reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.
- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
  - (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
  - (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
  - (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
  - (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
  - (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
  - (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
  - (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
  - (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
  - (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
  - (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
  - (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
  - (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
  - (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
  - (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
  - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
  - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
  - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
  - (4) Provide documentation of the inspection results for each structure to indicate:
    - a. Safety Hazard Present
    - b. Health Hazards Present
    - c. Hazardous Materials Present
  - (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
  - (6) Leave the demolished site clean, level and free of debris.
  - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
  - (8) Obtain all required permits.
  - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
  - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).



- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

**Attachment D**

**DIVISION OF EMERGENCY MANAGEMENT**

**REQUEST FOR ADVANCE OR REIMBURSEMENT OF  
HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: Town of Palm Beach

REMIT ADDRESS: \_\_\_\_\_

CITY: Palm Beach STATE: FL ZIP CODE: 33480

PROJECT TYPE: Utility Protective Measures PROJECT #: 4337-278-R

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0374

APPROVED BUDGET: \_\_\_\_\_ FEDERAL SHARE: \_\_\_\_\_ MATCH: \_\_\_\_\_

ADVANCED RECEIVED: \_\_\_\_\_ N/A \_\_\_\_\_ AMOUNT: \_\_\_\_\_ SETTLED? \_\_\_\_\_

Invoice Period: \_\_\_\_\_ To \_\_\_\_\_ Payment #: \_\_\_\_\_

Eligible Amount 100% (Current Request)	Obligated Federal Amount 57%	Obligated Non- Federal 43%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ \_\_\_\_\_

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: \_\_\_\_\_

NAME / TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL	\$ _____
ADMINISTRATIVE COST	\$ _____
APPROVED FOR PAYMENT	\$ _____
<div style="text-align: right;"> GOVERNOR'S AUTHORIZED REPRESENTATIVE  DATE </div>	

**SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT  
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE  
HAZARD MITIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: Town of Palm Beach PAYMENT #: \_\_\_\_\_  
PROJECT TYPE: Utility Protective Measures PROJECT #: 4337-278-R  
PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0374

	REF NO <sup>2</sup>	DATE <sup>3</sup>	DOCUMENTATION <sup>4</sup>	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
This payment represents <u>    %    </u> completion of the project.				<b>TOTAL</b>	

<sup>2</sup> Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

<sup>3</sup> Date of delivery of articles, completion of work or performance services. (per document)

<sup>4</sup> List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E  
JUSTIFICATION OF ADVANCE PAYMENT**

**SUB-RECIPIENT:** Town of Palm Beach

If you are requesting an advance, indicate same by checking the box below.

☐ **ADVANCE REQUESTED**

Advance payment of \$ \_\_\_\_\_ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.

If you are requesting an advance, complete the following chart and line item justification below.

**PLEASE NOTE:** Calculate your estimated expenses at 100% of your expected needs for 90 days.

Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

**ESTIMATED EXPENSES**

<b>BUDGET CATEGORY/LINE ITEMS</b> (list applicable line items)	<b>20____-20____ Anticipated Expenditures for First Three Months of Contract</b>
<u>For example</u> <b>ADMINISTRATIVE COSTS</b> (Include Secondary Administration.)	
<u>For example</u> <b>PROGRAM EXPENSES</b>	
<b>TOTAL EXPENSES</b>	

**LINE ITEM JUSTIFICATION** (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F

DIVISION OF EMERGENCY MANAGEMENT  
HAZARD MITIGATION GRANT PROGRAM  
QUARTERLY REPORT FORM

**Instructions:** Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.

SUB-RECIPIENT: Town of Palm Beach PROJECT #: 4337-278-R  
PROJECT TYPE: Utility Protective Measures CONTRACT #: H0374  
PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: \_\_\_\_\_

**Advance Payment Information:**

Advance Received ☐ N/A ☐ Amount: \$ \_\_\_\_\_ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20\_\_ \$ \_\_\_\_\_ Oct-Dec 20\_\_ \$ \_\_\_\_\_ Jan-Mar 20\_\_ \$ \_\_\_\_\_ Apr-Jun 20\_\_ \$ \_\_\_\_\_

**Target Dates:**

Contract Initiation Date: \_\_\_\_\_ Contract Expiration Date: \_\_\_\_\_

Estimated Project Completion Date: \_\_\_\_\_

Project Proceeding on **Schedule**? ☐ Yes ☐ No (*If No, please describe under **Issues** below*)

**Percentage** of Work Completed (*may be confirmed by state inspectors*): \_\_\_\_\_ %

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: (*Milestones from Contract with estimated dates*)

<u>Milestone</u>	<u>Date</u>

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

**Cost Status:** ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments**/Elaboration:

**NOTE:** Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form:

Phone:

**~ To be completed by Division staff ~**

Date Reviewed: \_\_\_\_\_ Reviewer: \_\_\_\_\_

Actions:

**Attachment G**  
**Warranties and Representations**

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

**Certification Regarding  
Debarment, Suspension, Ineligibility  
And Voluntary Exclusion**

**Subcontractor Covered Transactions**

- (1) The prospective subcontractor, \_\_\_\_\_, of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

**SUBCONTRACTOR**

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

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Street Address

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

\_\_\_\_\_  
Date

**Town of Palm Beach**  
\_\_\_\_\_  
Sub-Recipient's Name

**H0374**  
\_\_\_\_\_  
DEM Contract Number

**4337-278-R**  
\_\_\_\_\_  
FEMA Project Number

**Attachment I**  
**Federal Funding Accountability and Transparency Act**  
**Instructions and Worksheet**

**PURPOSE:** The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

**ORGANIZATION AND PROJECT INFORMATION**

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-278-R  
FUNDING AGENCY: Federal Emergency Management Agency  
AWARD AMOUNT: \$ 8,465,355.00  
OBLIGATION/ACTION DATE: September 27, 2019  
SUBAWARD DATE (if applicable): \_\_\_\_\_  
  
DUNS#: 076030659  
DUNS# +4: \_\_\_\_\_



\*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: \_\_\_\_\_  
DBA NAME (IF APPLICABLE): \_\_\_\_\_  
PRINCIPAL PLACE OF BUSINESS ADDRESS: \_\_\_\_\_  
ADDRESS LINE 1: \_\_\_\_\_  
ADDRESS LINE 2: \_\_\_\_\_  
ADDRESS LINE 3: \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE+4\*\* \_\_\_\_\_

PARENT COMPANY DUNS# (if applicable): \_\_\_\_\_  
CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): \_\_\_\_\_

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to bury overhead utility infrastructure, consisting of electrical, telephone, and cable communications in the north area of town that consists of properties between Country Club Road south to Southland Road and in the south area of town that consists of properties between South Lake Drive and Hibiscus Avenue, from Peruvian Avenue to Royal Palm Way, and the properties between the Intracoastal Waterway and the Atlantic Ocean, from Royal Palm Way to Seaspray Avenue, in the Town of Palm Beach, Florida, 33480.

The HMGP project scope of work proposes to remove existing utilities poles and overhead lines and place them underground. The Town of Palm Beach is predominantly served with electric and communications services through a network of overhead wires mounted to an estimated 2,000 wood or concrete poles. There are approximately 37 pole-miles of overhead infrastructure within the Town limits. The removal of utility poles and overhead lines provides increased survivability for wind storms and improved safety benefits by reducing the potential of hazardous conditions occurring in the event of natural disasters. Severe wind events can cause poles and/or overhead lines to fall and impact property and possibly cause live electric lines to be exposed. Downed electric lines and vegetation overgrowth onto electric lines pose a potential threat of property fire and injury due to electric shock and can restrict ingress and egress of residents and emergency services.

The project shall provide protection against 170 MPH winds or the wind speed protection and impact requirements indicated by the effective Florida Building Code or any other applicable code at the time permits are issued. Activities shall be in strict compliance with Federal, State and Local applicable Rules and Regulations.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: \_\_\_\_\_  
ADDRESS LINE 2: \_\_\_\_\_  
ADDRESS LINE 3: \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE+4\*\* \_\_\_\_\_

**CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:**

**\*\*Providing the Zip+4 ensures that the correct Congressional District is reported.**

**EXECUTIVE COMPENSATION INFORMATION:**

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes ☐ No ☐

***If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.***

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes ☐ No ☐

**If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]**

**If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:**

**"Executive"** is defined as "officers, managing partners, or other employees in management positions".

**"Total Compensation"** is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.

- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR**

(Date of Fiscal Year Completion \_\_\_\_\_)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: 

NAME AND TITLE: KIRK BLOUIN, TOWN MANAGER

DATE: 11/27/19

**Attachment J**  
**Mandatory Contract Provisions**

**Provisions:**

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12540 (3 CFR Part 1936 Comp., p. 189) and 12689 (3 CFR Part 1939 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12540.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 Procurement of recovered materials.

#### APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

##### A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHES (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

##### 1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section: indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.469 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

##### 2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to

## **ATTACHMENT “D”**

**INSURANCE:** The contractor shall provide at its own cost and expense during the life of the contract, the following insurance coverages to the Town of Palm Beach (30) thirty business days prior to the commencement of any work. All contractors including any independent contractors and subcontractors utilized must comply with these requirements. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates and/or policies to include premiums as determined by the Town of Palm Beach. It shall be an affirmative obligation upon the Service Provider to advise Ebix, the Town's insurance certificate management service provider, at [townofpalmbeach@ebix.com](mailto:townofpalmbeach@ebix.com); P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of this agreement/contract. The Town of Palm Beach reserves the right to require additional insurance coverages and limits based upon the particular service or change order requested by the contractor.

If the contractor maintains higher limits than the minimums shown below, the Town requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Comprehensive General Liability Insurance coverage with limits of liability not less than \$5,000,000 Each Occurrence/\$10,000,000 Aggregate or a per project aggregate of \$5,000,000. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability including Completed Operations coverage. Products & completed operations coverage to be provided for a minimum of 10 years from the date of possession by owner or completion of contract. A waiver of subrogation shall be in the favor of the Town. The contractor's General Liability coverage shall be primary and non-contributory.

For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

This insurance shall indicate on the certificate of insurance the following coverages:

- a. Premises-Operation
- b. Independent Contractor and Subcontractors
- c. Products and Completed Operations
- d. Broad Form Contractual

Contractors Pollution Liability coverage may be required depending on scope of services.

Professional Liability. must maintain professional liability or equivalent errors & omissions liability with limit of not less than \$1,000,000 per occurrence. For policies written on a claims made basis, architect or engineer shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, architect or engineer must purchase an extended reporting period rider during the life of this contract of not less than 3 years. Coverage is to apply on a primary basis.

Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident.



Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440. Should the scope of work performed by contractor qualify its employee for benefits under federal workers' compensation statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine act), proof of appropriate federal act coverage must be provided. A waiver of subrogation must be provided.

Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the contract, the amount excess of such claims or any portion thereof may be withheld from any payment due or to become due the Contractor until such time the Contractor shall furnish such additional security covering such claims as may be determined by the Town of Palm Beach.

All policies and certificates of insurance of the Contractor shall contain the following clauses:

1. Insurers shall have no right of recovery or subrogation against the Town (including its agents, officers, past and present employees, elected officials and representatives), it, being the intention of the parties, the insurance policy in effect shall protect both parties and be the primary coverage and non-contributory for any and all losses covered by the above described insurance.
2. The clause "other insurance provisions" in a policy in which the Town is endorsed as an additional insured shall not apply to the Town, its agents, officials, past and present employees, elected officials and representatives if these provisions conflict with or otherwise limit the obligations of the contractor under the terms of this agreement.
3. Insurance companies issuing the policy or policies shall have no recourse against the Town, (including its agents, officers, past and present of any premiums or assessments under any form of policy.
4. Any and all deductibles or self-insured retentions in the above described insurance policy shall be assumed by and be for the account of and at the sole risk of the contractor. The amount of the deductible or self-insured retention must be accepted by the Town Manager.

Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

## **ATTACHMENT “E”**

**BURKHARDT  
CONSTRUCTION, INC.**

Vincent G. Burkhardt  
President



July 14, 2021; Rev. 7/27/21

Town of Palm Beach  
Public Works/Engineering Department  
Attn: Ms. Patricia Strayer, P.E., Town Engineer  
951 Old Okeechobee Road, Ste. "A"  
West Palm Beach, FL 33401

**RE: Phase 5 – North and South – Townwide Overhead Utility Undergrounding  
Construction Manager - Construction Phase Services Proposal**

Dear Ms. Strayer:

Burkhardt Construction, Inc. (BCI), acting as your Construction Manager (CM) is pleased to provide this proposal to the Town of Palm Beach (Owner) for Construction Phase Services for the Phase 5 North and South – Townwide Overhead Utility Undergrounding.

The scope of the construction management in Phase 5 includes overseeing all work, management and supervision of the Town's Construction Contractor(s) to fully complete the construction of an overhead to underground utility conversion project consisting of existing overhead electric, telephone, and cable TV utilities within the Town of Palm Beach. The work will also include management of site restoration, utility adjustments, and coordination of FPL installed LED light poles.

Florida Public Utilities (FPU) will be performing gas main improvements within the limits of these phases during the undergrounding project. The CM will coordinate their efforts with FPU during construction.

LaConte Engineering (LE) will provide Grant Administration and Consulting services as a specialty consultant to BCI. LE, working as the FEMA Grant Administrator for BCI, will assist the CM, Design Team and the TOPB in successfully accomplishing a 100% reimbursement of the FEMA share of all construction for Phase 5. LE will track all FEMA requirements, submit all FEMA reports and paperwork for reimbursement to administer the HMGP grant and allow reimbursement of all eligible construction activities.

The CM will manage the work performed by the competitively selected installation Contractor(s) as well as coordinate the schedules and installation activities of the utility owners (FPL, AT&T, and Comcast). The CM will monitor the progress and schedule of the work being performed. The CM will oversee the work area to ensure the Town's Construction Contractor(s) complete final restoration of private property areas impacted by the demolition of the existing overhead system upon final completion. The CM will also manage the Town's Construction Contractor(s) to ensure local traffic is maintained in accordance with the Transportation Management Plan guidelines developed for this project. Specific Maintenance of Traffic Plans will be required by the Town's Construction Contractor(s) and reviewed by the CM. The CM will conduct regular progress meetings (every two weeks) to coordinate activities and provide general updates of the work progress. The CM will communicate and coordinate with impacted property owners. Monthly community meetings will be hosted by the CM to keep the community informed of the work progress.

**SCOPE OF SERVICES:**

The CM shall function in the role as primary oversight and management of construction providing all necessary services including but not limited to the following:

- a) Prepare an overall Construction Management Plan for the project, including a procurement plan with a recommended procurement schedule to coordinate and expedite the procurement of materials and equipment by selected contractor(s).
- b) Provide oversight of the construction site and provide for the administration and supervision of the project and all contractor(s) activities.
- c) In collaboration with Construction Contractor(s) establish and maintain the construction schedule including identifying variances, delays or early completion of tasks, and the maintenance of the schedule.
- d) Develop a system for cost control.
- e) Develop and manage the pay application and change order process of Construction Contractor(s), including coordination with the Design Team and Town personnel.
- f) Provide continuous monitoring and observation of work to determine progress and conformance with design documents documenting same.
- g) Schedule and coordinate all required testing with appropriate disciplines.

- h) Maintain written project progress records and provide written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance of Construction Contractor(s) and schedule adherence.
- i) Participate in meetings on the project with the Town, Construction Contractor(s) and design staff or public individuals or groups as may be directed by the Town's project manager. Prepare project meeting agenda(s) and distribute meeting notes.
- j) Work in cooperation with the Town's public outreach professionals in keeping those in the work zone informed of construction activities including specific coordination with property owners when work is to occur on private property or when any interruptions in utility service are anticipated.
- k) Develop a plan, coordinate and assist in the start-up testing and certification of any building systems and equipment, replaced and/or affected by the construction.
- l) Provide project close out coordination.
- m) Provide Certificate of Completion and all documents of record to Town staff and/or consultants for archiving.
- n) Provide all other services generally provided by Construction Manager on a project of like magnitude, scope, use, and complexity.
- o) Keep written minutes of all meetings, decisions and discussions pertaining to this project and submit copies of same to the Town and/or Town designees for archiving.
- p) Coordinate the activities and required field work of the electric, cable, telephone and/or other communications service providers as required to facilitate the project.
- q) Coordinate with third party entities which are not under the control of this project, but may be performing work within the project boundaries, such as Florida Public Utilities and private homeowners.
- r) Work in collaboration with LaConte Engineering – FEMA Grant Administrator

**FEMA GRANT ADMINISTRATOR SCOPE OF SERVICES:**

LaConte Engineering (LE) will provide Grant Administration and Consulting services as a specialty consultant to BCI. As the FEMA Grant Administrator, LE will provide the following services:

1. Attend bi-weekly project progress meetings.
2. LE will review the construction contract, forms and sub-contractor documentation required by the Terms & Conditions to validate compliance with the HMGP grant requirements.
3. LE will obtain, review, and record contractor documentation as required by the construction contract and the HMGP grant throughout the construction phase.
4. LE will also assist in the preparation of additional documentation, and coordinate with FDEM and FEMA as may be needed to comply with the HMGP grant requirements as follows:
  - a. Monitor 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" for compliance.
  - b. Provide guidance relating to HMGP compliance and FDEM coordination during construction as follows:
  - c. We ensure that any procurement involving funds authorized by the HMGP grant agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. 200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").
  - d. As required by 2 C.F.R. 200.318(i), we will support the TOPB to "maintain records sufficient to detail the history of procurement. These records will include but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."
  - e. Except for procurements by micro-purchases pursuant to 2 C.F.R. 200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. 200.320(b), if the TOPB chooses to subcontract any of the work required under the HMGP grant agreement, then we will forward a copy of any solicitation (whether competitive or non-competitive) to FDEM at least fifteen (15) days prior to the publication or communication of the solicitation. The solicitation shall be reviewed by FDEM and comments, if any, will be provided within three (3) business days. Consistent with 2 C.F.R. 200.324, FDEM will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. 200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. 200.318(k), FDEM will not substitute its judgment for that of the TOPB. While the TOPB does not need the approval of FDEM to publish a

competitive solicitation, this review may allow FDEM to identify deficiencies in the vendor requirements or in the commodity or service specifications. FDEM's review and comments shall not constitute an approval of the solicitation. Regardless of the FDEM's review, the TOPB remains bound by all applicable laws, regulations, and the HMGP grant agreement terms. If during its review FDEM identifies any deficiencies, then FDEM shall communicate those deficiencies as quickly as possible within the three (3) business day window outlined above. If a competitive solicitation is published after receiving comments from FDEM that the solicitation is deficient, then FDEM may:

- Terminate the HMGP grant agreement in accordance with the provisions outlined in paragraph (17) above; and,
  - Refuse to reimburse the TOPB for any costs associated with that solicitation.
- f. Except for procurements by micro-purchases pursuant to 2 C.F.R. 200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. 200.320(b), if the TOPB chooses to subcontract any of the work required under the HMGP grant agreement, then we will forward FDEM a copy of any contemplated contract prior to contract execution. FDEM shall review the unexecuted contract and provide comments, if any, within three (3) business days. Consistent with 2 C.F.R. 200.324, FDEM will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. 200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. 200.318(k), FDEM will not substitute its judgment for that of the TOPB. While the TOPB does not need FDEM approval to execute a subcontract, this review may allow FDEM to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. FDEM's review and comments shall not constitute an approval of the subcontract. Regardless of FDEM's review, the TOPB remains bound by all applicable laws, regulations, and the HMGP grant agreement terms. If during its review FDEM identifies any deficiencies, then FDEM shall communicate those deficiencies as quickly as possible within the three (3) business day window outlined above. If a subcontract is executed after receiving a communication from FDEM that the subcontract is non-compliant, then FDEM may:
- Terminate the HMGP grant agreement in accordance with the provisions outlined in paragraph (17) above; and,
  - Refuse to reimburse the TOPB for any costs associated with that subcontract.
- g. We will review the subcontract to confirm that (i) the subcontractor is bound by the terms of the HMGP grant agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold FDEM and TOPB harmless against all claims of whatever nature arising out of the subcontractor's performance of work

- under the HMGP grant agreement, to the extent allowed and required by law.
- h. As required by 2 C.F.R. 200.318(c)(1), We will advise the TOPB to "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."
  - i. As required by 2 C.F.R. 200.319(a), We will advise the TOPB to conduct any procurement under the HMGP grant agreement "in a manner providing full and open competition." Accordingly, the TOPB shall not:
    - Place unreasonable requirements on firms for them to qualify to do business;
    - Require unnecessary experience or excessive bonding;
    - Use noncompetitive pricing practices between firms or between affiliated companies;
    - Execute noncompetitive contracts to consultants that are on retainer contracts;
    - Authorize, condone, or ignore organizational conflicts of interest;
    - Specify only a brand name product without allowing vendors to offer an equivalent;
    - Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
    - Engage in any arbitrary action during the procurement process; or,
    - Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.
  - j. "Except in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, as required by 2 C.F.R. 200.319(b), we cannot use a geographic preference when procuring commodities or services under the HMGP grant agreement.
  - k. We will review and advise to assure that any procurement involving invitations to bid (i.e., sealed bids) is in accordance with 2 C.F.R. 200.320(c) as well as section 287.057(1)(a), Florida Statutes.
  - l. We will review and advise to assure that any procurement involving requests for proposals (i.e., competitive proposals) is in accordance with 2 C.F.R. 200.320(d) as well as section 287.057(1)(b), Florida Statutes.
  - m. For each subcontract, we will provide a written statement to FDEM as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the TOPB shall comply with the requirements of 2 C.F.R. 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").
5. LE will also specifically coordinate with FDEM and FEMA, as needed, to comply with the HMGP grant requirements and maintain reimbursement eligibility on the following:



- a) Review, revise, and forward the certifications regarding debarment, suspension, ineligibility, and voluntary exclusion to FDEM, and assist in getting them completed by bidders.
  - b) Review and recommend revisions, as needed, and submit bid tabulations to FDEM.
  - c) Review and provide guidance in the TOPB's contractor selection process, including coordination and meetings, as needed.
  - d) Provide recommendations and forward the notice to proceed and purchase order(s) to FDEM.
  - e) Provide consultation as needed and submit signed contracts to FDEM for HMGP grant reimbursement record.
  - f) Review and recommendations on cost and increases from the HMGP grant agreement and coordinate with FDEM and FEMA.
  - g) Provide consultation and coordination with FDEM and FEMA on eligibility for possible additional grant funding/increases.
  - h) Attend meetings, participate in phone calls, and email correspondence with FDEM and FEMA to address the TOPB requirements and responsibilities as specified in the HMGP grant agreement and promote project cost reimbursements.
6. LE will obtain and review the project status in order to prepare the required Quarterly Reports, as well as Milestones and Activities reports to demonstrate/report project progress and compliance with the HMGP grant. LE will also monitor project modifications, including those due to unanticipated construction issues as well as those resulting from the compliance review.
7. LE will request, obtain, review all invoices, and proof of payment documentation and prepare quarterly requests for reimbursement (RFR) concurrent with the submission of quarterly reports.
8. LE will consult with BCI in the preparation and submittal of the Final Construction Management Plan to the TOPB after the construction services phase of the project. LE will review the draft Final Construction Management Plan to ensure it is in accordance with the HMGP guidelines and provide recommendations for issues of concern.

**BURKHARDT  
CONSTRUCTION, INC.**


Please see attached Exhibit "A" for breakdown of our general conditions, management fees and related costs associated with performing the services described.

We have attached our current hourly rates for your use should additional services be requested.

Thank you for the opportunity to submit this proposal. If you have any questions on this proposal, please contact us at (561) 659-1400.

Submitted By:  
Construction Manager

**Burkhardt Construction, Inc.**

  
Marc R. Kleisley Title: Vice President

Accepted by:  
Owner

**Town of Palm Beach**

By: \_\_\_\_\_  
Printed Name

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

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

Upon your acceptance of this letter agreement Burkhardt Construction, Inc. shall begin work immediately. Please return one original for our files.

## Hourly Rates For Additional Requested Services

<u>Name</u>	<u>Position</u>	<u>Rate</u>
Vincent G. Burkhardt	President/Proj. Principal	\$300.00
Sharon H. Burkhardt	Secretary/C.P.A.	\$200.00
Marc R. Kleisley	Vice President/Proj. Principal	\$175.00
Anthony Sabatino	Senior Project Manager	\$150.00
Bill Zammit	Snr. Vertical Project Manager	\$150.00
Adam Rossmell	Project Manager	\$100.00
CJ Rhody	Project Manager	\$100.00
Brandon Rhodes	Project Manager	\$100.00
Kevin Brennen	Asst. Project Manager	\$ 75.00
Nicholas Fasulo	Asst. Project Manager	\$ 75.00
Ruben Almazan	Const. Field Mgr.	\$100.00
Karl T. Kaminski	Utilities Const. Field Mgr.	\$100.00
Lee VanPraag	Utilities Const. Field Mgr.	\$100.00
Michael Parsons	Utilities Const. Field Mgr.	\$100.00
Hemant Tank	Estimator/Cost Engineer	\$ 75.00
Diane Decker	Resident/Merchant Outreach	\$ 75.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	\$ 90.00
Katy Pantaleon	Accounting	\$ 75.00
Brittany Darville	Admin. Ass't/Clerical	\$ 50.00

**Town of Palm Beach  
Townwide Overhead Utility Undergrounding  
Phase 5 North and South**

**CONSTRUCTION MANAGEMENT PROPOSAL**

**From:** **Burkhardt Construction, Inc.**  
Attn: Marc Kleisley, Vice President  
1400 Alabama Ave.  
West Palm Beach, FL 33401  
Ph: (561) 659-1400  
Fax: (561) 659-1402

**Owner:** **Town Of Palm Beach**  
Public Works & Engineering Dept  
951 Old Okeechobee Road  
West Palm Beach, FL 33401  
Tel: (561) 838-5440  
Fax: (561) 835-4691

**Engineer:** **Kimley-Horn & Associates, Inc.**  
Attn: Kevin Schanen, P.E.  
1920 Wekiva Way, Suite 200  
West Palm Beach, FL 33411  
Ph: (561) 845-0665  
Fax: (561) 863-8175

**Project:** **Townwide Overhead Utility Undergrounding - Phase 5 North and South**

**Plans:** Management Based on Plans / Specifications received 5/3/21  
Complete Plan Log Attached

**Location:** Town of Palm Beach

**Proposal Date:** 7/14/2021; Rev. 7/27/21

<b>General Conditions</b>	<b>\$ 135,901.20</b>
<b>Project Management - Phase 5 North and South</b>	<b>\$ 1,609,342.50</b>
<b>Profit</b>	<b>\$ 174,556.30</b>
<b>Phase 5 North and South Guaranteed not to Exceed</b>	<b>\$ 1,919,800.00</b>



EXHIBIT "A"

**Town of Palm Beach  
Townwide Overhead Utility Undergrounding  
Phase 5 North and South**

**GENERAL CONDITIONS**

**From:** **Burkhardt Construction, Inc.**  
Attn: Marc Kleisley, Vice President  
1400 Alabama Ave.  
West Palm Beach, FL 33401  
Ph: (561) 659-1400  
Fax: (561) 659-1402

**Owner:** **Town Of Palm Beach**  
Public Works & Engineering Dept  
951 Old Okeechobee Road  
West Palm Beach, FL 33401  
Tel: (561) 838-5440  
Fax: (561) 835-4691

**Engineer:** **Kimley-Horn & Associates, Inc.**  
Attn: Kevin Schanen, P.E.  
1920 Wekiva Way, Suite 200  
West Palm Beach, FL 33411  
Ph: (561) 845-0665  
Fax: (561) 863-8175

**Project:** **Townwide Overhead Utility Undergrounding - Phase 5 - North / South**

**Plans:** Management Based on Plans / Specifications received 5/3/21  
Complete Plan Log Attached

**Location:** Town of Palm Beach

**Proposal Date:** 7/14/2021; Rev. 7/27/21

Item Description					Amount
BASED ON A 24 MONTH DURATION					
<i>MOBILIZATION (move-in, move-out)</i>					\$0.00
TRANSPORT	\$65.00 /	Hr	x	0	\$0.00
EQUIPMENT	\$35.00 /	Hr.	x	0	\$0.00



EXHIBIT "A"

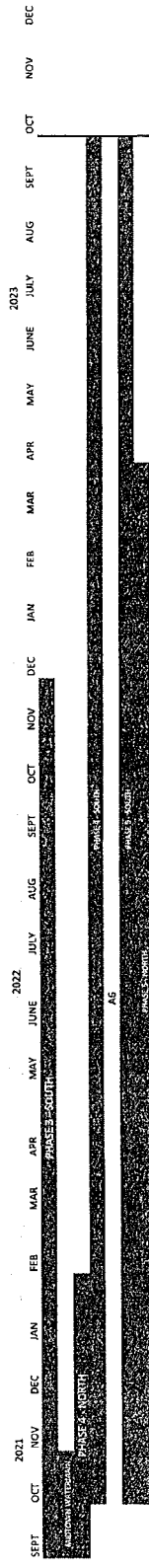
<b>PROJECT FIELD OFFICE</b>					<b>\$49,425.00</b>
OFFICE	\$3,500.00 /	mo.	x	5	\$17,500.00
YARD	\$0.00 /	mo.	x	0	\$0.00
EMPLOYEE PARKING FEES	\$500.00 /	mo.	x	0	\$0.00
WORK PLATFORM FOR YARD	\$200.00 /	mo.	x	0	\$0.00
TEMPORARY FENCING FOR YARD	\$500.00 /	mo.	x	0	\$0.00
CONSTRUCTION YARD LIGHTING	\$0.00 /	mo.	x	0	\$0.00
OFFICE FURNISHINGS	\$500.00 /	mo.	x	5	\$2,500.00
COMPUTERS	\$300.00 /	mo.	x	5	\$1,500.00
PROCORE SOFTWARE	\$15,000.00 /	ls	x	1	\$15,000.00
COPY MACHINE	\$350.00 /	mo.	x	5	\$1,750.00
FAX MACHINE	\$100.00 /	mo.	x	0	\$0.00
INTERNET SERVICE	\$150.00 /	mo.	x	5	\$750.00
CELLULAR TELEPHONE	\$500.00 /	mo.	x	5	\$2,500.00
TELEPHONE	\$150.00 /	mo.	x	5	\$750.00
FEDERAL EXPRESS MAILINGS	\$100.00 /	mo.	x	0	\$0.00
POSTAGE	\$50.00 /	mo.	x	5	\$250.00
PHOTOGRAPHS					
AERIAL PHOTOS	\$110.00 /	mo.	x	0	\$0.00
JOB PHOTOS	\$50.00 /	wk	x	0	\$0.00
PRE-CONSTRUCTION VIDEO	/	ls	x	0	BY OTHERS
PLAN REPRODUCTION COST/PRINTING	\$200.00 /	set	x	5	\$1,000.00
OFFICE SUPPLIES	\$50.00 /	mo.	x	5	\$250.00
FIRST AID SUPPLIES	\$50.00 /	mo.	x	5	\$250.00
WATER SERVICE	\$35.00 /	mo.	x	5	\$175.00
SANITARY SERVICE	\$50.00 /	mo.	x	5	\$250.00
ELECTRIC SERVICE	\$200.00 /	mo.	x	5	\$1,000.00
GARBAGE SERVICE	\$25.00 /	mo.	x	5	\$125.00
CONSTRUCTION WATER	\$500.00 /	mo.	x	5	\$2,500.00
JOHN DEERE GATOR (1)	\$500.00 /	mo.	x	0	\$0.00
ICE	\$275.00 /	mo.	x	5	\$1,375.00
<b>BONDS</b>					<b>\$0.00</b>
GENERAL BOND	\$0.00		x	1.25%	NOT INCLUDED
<b>PARTNERING INITIATIVES</b>					<b>\$0.00</b>
NOTICES, LETTERS, INFORMATION MEETINGS					NIC
<b>INSURANCE</b>					<b>\$36,476.20</b>
GENERAL INSURANCE	\$1,919,800.00		x	1.90%	\$36,476.20
Commercial General Liability					
Comprehensive Automobile Liability					
Owner Indemnification					
Professional (Errors/Omissions) Liability					
Excess/Umbrella Liability					
ADD'L INSURED	\$100.00 /	ea.	x	0	\$0.00
ADDED INSURANCES					NOT INCLUDED
Railroad protective Liability Ins.					NOT INCLUDED
Builders Risk Insurance					NOT INCLUDED
Installation Floater					NOT INCLUDED
Flood Insurance					NOT INCLUDED
SUBCONTRACTORS' INSURANCE					NOT INCLUDED
<b>SANITARY SERVICES</b>					<b>\$0.00</b>
JOB TOILET (2 ea.)	\$0.00 /	mo.	x	24	BY OTHERS

**BURKHARDT**  
CONSTRUCTION, INC.

## EXHIBIT "A"

<u>TESTING COSTS</u>		\$50,000.00
DENSITIES		
PRESSURE	NOT INCLUDED	
PROCTORS		
BACTERIOLOGICAL	NOT INCLUDED	
CONCRETE CYLINDERS		
ENGINEERING & REPORTING		
TV'ING OF INSTALLED LINES	NOT INCLUDED	
<u>FEES</u>		\$0.00
TOPB BUILDING DEPT. PERMIT FEES/REVISION FEES		NONE ANTICIPATED
PERMIT SUBMISSION AND EXPEDITING		BY OTHERS
NPDES REPORTING		BY OTHERS
FDOT GENERAL USE PERMITS		BY OTHERS
DEWATERING PERMITS		BY OTHERS
RAILROAD PERMITS		BY OTHERS
PALM BEACH COUNTY PERMITS		BY OTHERS
CITY OF WEST PALM BEACH PERMITS		BY OTHERS
<u>SURVEYING</u>		\$0.00
LAYOUT & ASBUILTS		BY OTHERS
ALLOWANCE FOR RESTAKING & DRAFTING		BY OTHERS
<u>SMALL HAND TOOLS/EQUIPMENT RENTAL</u>		\$0.00
ALLOWANCE (GENERAL)		NIC
HANDLING, STORAGE, UN-LOADING OF OWNER DIRECT PURCHASE MATERIALS		NIC
GENERAL CONDITIONS TOTAL		\$135,901.20

MANAGEMENT / GC OVERLAP





**Town of Palm Beach  
Townwide Overhead Utility Undergrounding  
Phase 5 North and South**

**CONSTRUCTION PHASE MANAGEMENT FEE**

**From:** Burkhardt Construction, Inc.  
Attn: Marc Kleisley, Vice President  
1400 Alabama Ave.  
West Palm Beach, FL 33401  
Ph: (561) 659-1400  
Fax: (561) 659-1402

**Owner:** Town Of Palm Beach  
Public Works & Engineering Dept  
951 Old Okeechobee Road  
West Palm Beach, FL 33401  
Tel: (561) 838-5440  
Fax: (561) 835-4691

**Engineer:** Kimley-Horn & Associates, Inc.  
Attn: Kevin Schanen, P.E.  
1920 Wekiva Way, Suite 200  
West Palm Beach, FL 33411  
Ph: (561) 845-0665  
Fax: (561) 863-8175

**Project:** Townwide Overhead Utility Undergrounding - Phase 5 North and South

**Plans:** Management Based on Plans / Specifications received 5/3/21  
Complete Plan Log Attached

**Location:** Town of Palm Beach

**Proposal Date:** 7/14/2021; Rev. 7/27/21

Item Description	PHASE 5 SOUTH								Rate/Hr.	Amount
Based on a 24 month duration - Starting October 1, 2021										
Current thru October 2021	5 weeks									
November 2021 thru January 2022	13 weeks									
February 2022 thru November 2022	43 weeks									
December 2022 thru September 2023	43 weeks									
	104 weeks									
	thru Oct '21		Nov '21 thru Jan '22		Feb '22 thru Nov '22		Dec '22 thru - September '23			
	Hrs./Week	Weeks	Hrs./Week	Weeks	Hrs./Week	Weeks	Hrs./Week	Weeks		
Project Principal	2.5	5	2.5	13	2.5	43	5	43	\$ 175.00	\$ 64,312.50
Senior Project Manager	4	5	4	13	13	43	16	43	\$ 150.00	\$ 197,850.00
Project Manager	20	5	20	13	20	43	40	43	\$ 100.00	\$ 294,000.00
Assistant Project Manager	0	5	0	13	0	43	0	43	\$ 75.00	\$ -
Superintendent/Construction Field Manager	4	5	4	13	8	43	8	43	\$ 100.00	\$ 76,000.00
Merchant/Resident Liaison	4	5	4	13	8	43	8	43	\$ 75.00	\$ 57,000.00
Project Accountant	0	5	2.5	13	2.5	43	0	43	\$ 90.00	\$ 12,600.00
Administrative Assistant	0	5	5	13	5	43	0	43	\$ 50.00	\$ 14,000.00
Field Office Clerk	0	5	0	13	0	43	0	43	\$ 50.00	\$ -
FEMA Grant Administrator										\$ 118,315.00
										<u>\$ 834,077.50</u>



## EXHIBIT "A"

Item Description	PHASE 5 NORTH						Rate/Hr.	Amount
Based on a 18 month duration - Starting October 1, 2021								
Current thru October 2021	5 weeks							
November 2021 thru January 2022	13 weeks							
February 2022 thru November 2022	43 weeks							
December 2022 thru March 2023	17 weeks							
	78 weeks							
	thru Oct '21		Nov '21 thru Jan '22		Feb '22 thru Nov '22		Dec '22 thru March '23	
	Hrs./Week	Weeks	Hrs./Week	Weeks	Hrs./Week	Weeks	Hrs./Week	Weeks
Project Principal	5	5	5	13	5	43	5	17
Senior Project Manager	10	5	10	13	0	43	0	17
Project Manager	0	5	0	13	0	43	0	17
Assistant Project Manager	16	5	16	13	20	43	20	17
Superintendent/Construction Field Manager	8	5	8	13	32	43	40	17
Merchant/Resident Liaison	8	5	8	13	32	43	40	17
Project Accountant	5	5	5	13	5	43	5	17
Administrative Assistant	0	5	0	13	10	43	10	17
Field Office Clerk	0	5	0	13	0	43	0	17
FEMA Grant Administrator								



***LACONTE ENGINEERING***  
***Civil Engineering Design & Consulting***  
*2440 SE Federal Hwy, Suite W, Stuart, FL 34994*  
*(772) 215-0354 • [placonte@laconteengineering.com](mailto:placonte@laconteengineering.com)*  
*FL CA License No. 30922*

Burkhardt Construction, Inc.  
Attn: Marc Kleisly  
1400 Alabama Avenue  
West Palm Beach, Florida 33401

*Revised July 26, 2021*

**RE:   Town of Palm Beach – Townwide Overhead Utility Undergrounding Program  
      Proposal for FEMA Grant Administrator – Construction Phase**

**Scope of Work**  
**FEMA Grant Administrator**  
**Town of Palm Beach**  
**Townwide Overhead Utility Undergrounding Program**  
**Phase Five, North and South – Construction Phase**

**BACKGROUND**

Burkhardt Construction, Inc. (BCI), has been selected as the Construction Manager (CM) by the Town of Palm Beach (TOPB) on this project to provide protective measures to the utility infrastructure in the Town of Palm Beach, Palm Beach County, Florida. This Phase Five, North and South project is approved for funding through the Hazard Mitigation Grant Program (HMGP) DR-4337-278-R, as approved by the Florida Division of Emergency Management (FDEM) and the Federal Emergency Management Agency (FEMA).

The HMGP project will bury overhead utility infrastructure, consisting of electrical, telephone, and cable communications in the north area of town that consists of properties between Country Club Road south to Southland Road and in the south area of town that consists of properties between South Lake Drive and Hibiscus Avenue, from Peruvian Avenue to Royal Palm Way, and the properties between the Intracoastal Waterway and the Atlantic Ocean, from Royal Palm Way to Seaspray Avenue, in the Town of Palm Beach, Florida, 33480.

The HMGP project scope of work proposes to remove existing utilities poles and overhead lines and place them underground. The TOPB is predominantly served with electric and communications services through a network of overhead wires mounted to an estimated 2,000 wood or concrete poles. There are approximately 37 pole-miles of overhead infrastructure within the Town limits.

The removal of utility poles and overhead lines provides increased survivability for windstorms and improved safety benefits by reducing the potential of hazardous conditions occurring in the event of natural disasters. Severe wind events can cause poles and/or overhead lines to fall and impact property and possibly cause live electric lines to be exposed. Downed electric lines and vegetation overgrowth onto electric lines pose a potential threat of property fire and injury due to electric shock and can restrict ingress and egress of residents and emergency services.

The project shall provide protection against 170 MPH winds, or the wind speed protection and impact requirements indicated by the effective Florida Building Code or any other applicable code at the time

***LACONTE ENGINEERING***  
***Civil Engineering Design & Consulting***

permits are issued. Activities shall be in strict compliance with Federal, State and Local applicable Rules and Regulations.

This project is to underground FPL, ATT and Comcast lines and private services, and will include traffic control, demolition, grading, earthwork, landscaping and irrigation construction and property restoration.

As the CM, BCI shall function as an agent of the TOPB, to administer and complete the project per the scope of work as approved in the HMGP.

---

**FEMA Grant Administrator – Construction Phase Services:**

LaConte Engineering will provide Grant Administration and Consulting services as a specialty consultant to BCI the Construction Manager (CM). LaConte Engineering, working as the FEMA Grant Administrator for BCI, will assist the CM and the TOPB in successfully accomplishing a 100% reimbursement of the FEMA share of all construction for Phase 5. Therefore, LaConte Engineering will track all FEMA requirements, submit all FEMA reports and paperwork for reimbursement, to administer the HMGP grant and allow reimbursement of all eligible construction activities.

As the FEMA Grant Administrator, LaConte Engineering will provide Construction Phase Services as follows:

**SCOPE OF SERVICES**

**Task 1 – Construction Progress Meetings:**

LaConte Engineering will have 1 individual participate in both 1 in-person meeting and 1 remote project meeting per month, attended by BCI, TOPB, the Contractor, Design Professionals, and others as requested. It is anticipated that these meetings will be held at the TOPB office, Construction Site office or other location as designated by the TOPB.

LaConte Engineering will also participate in 2 public meetings and presentations as may be requested throughout the project duration. LaConte Engineering will provide record of public outreach to FDEM/FEMA to demonstrate compliance with the HMGP.

TASK 1 – Services provided over a 24-month period for a TOTAL ESTIMATED FEE \$28,230.00

*Therefore, billing is anticipated to be approximately \$1,175 per month.*

**Task 2 – Contractor & Sub-Contractor Compliance:**

LaConte Engineering will review the construction contract, forms and sub-contractor documentation required by the Terms & Conditions to validate compliance with the HMGP grant requirements.

LaConte Engineering will obtain, review, and record contractor documentation as required by the construction contract and the HMGP grant throughout the construction phase.

LaConte Engineering will also assist in the preparation of additional documentation, and coordinate with FDEM and FEMA as may be needed to comply with the HMGP grant requirements as follows:

- Monitor 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" for compliance.

***LACONTE ENGINEERING***  
***Civil Engineering Design & Consulting***

- Provide guidance relating to HMGP compliance and FDEM coordination during construction as follows:
  - We ensure that any procurement involving funds authorized by the HMGP grant agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. 200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").
  - As required by 2 C.F.R. 200.318(i), we will support the TOPB to "maintain records sufficient to detail the history of procurement. These records will include but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."
  - Except for procurements by micro-purchases pursuant to 2 C.F.R. 200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. 200.320(b), if the TOPB chooses to subcontract any of the work required under the HMGP grant agreement, then we will forward a copy of any solicitation (whether competitive or non-competitive) to FDEM at least fifteen (15) days prior to the publication or communication of the solicitation. The solicitation shall be reviewed by FDEM and comments, if any, will be provided within three (3) business days. Consistent with 2 C.F.R. 200.324, FDEM will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. 200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. 200.318(k), FDEM will not substitute its judgment for that of the TOPB. While the TOPB does not need the approval of FDEM to publish a competitive solicitation, this review may allow FDEM to identify deficiencies in the vendor requirements or in the commodity or service specifications. FDEM's review and comments shall not constitute an approval of the solicitation. Regardless of the FDEM's review, the TOPB remains bound by all applicable laws, regulations, and the HMGP grant agreement terms. If during its review FDEM identifies any deficiencies, then FDEM shall communicate those deficiencies as quickly as possible within the three (3) business day window outlined above. If a competitive solicitation is published after receiving comments from FDEM that the solicitation is deficient, then FDEM may:
    - Terminate the HMGP grant agreement in accordance with the provisions outlined in paragraph (17) above; and,
    - Refuse to reimburse the TOPB for any costs associated with that solicitation.
  - Except for procurements by micro-purchases pursuant to 2 C.F.R. 200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. 200.320(b), if the TOPB chooses to subcontract any of the work required under the HMGP grant agreement, then we will forward FDEM a copy of any contemplated contract prior to contract execution. FDEM shall review the unexecuted contract and provide comments, if any, within three (3) business days. Consistent with 2 C.F.R. 200.324, FDEM will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. 200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. 200.318(k), FDEM will not substitute its judgment for that of the TOPB. While the TOPB

***LACONTE ENGINEERING***  
***Civil Engineering Design & Consulting***

does not need FDEM approval to execute a subcontract, this review may allow FDEM to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. FDEM's review and comments shall not constitute an approval of the subcontract. Regardless of FDEM's review, the TOPB remains bound by all applicable laws, regulations, and the HMGP grant agreement terms. If during its review FDEM identifies any deficiencies, then FDEM shall communicate those deficiencies as quickly as possible within the three (3) business day window outlined above. If a subcontract is executed after receiving a communication from FDEM that the subcontract is non-compliant, then FDEM may:

- Terminate the HMGP grant agreement in accordance with the provisions outlined in paragraph (17) above; and,
- Refuse to reimburse the TOPB for any costs associated with that subcontract.
- We will review the subcontract to confirm that (i) the subcontractor is bound by the terms of the HMGP grant agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold FDEM and TOPB harmless against all claims of whatever nature arising out of the subcontractor's performance of work under the HMGP grant agreement, to the extent allowed and required by law.
- As required by 2 C.F.R. 200.318(c)(1), We will advise the TOPB to "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."
- As required by 2 C.F.R. 200.319(a), We will advise the TOPB to conduct any procurement under the HMGP grant agreement "in a manner providing full and open competition." Accordingly, the TOPB shall not:
  - Place unreasonable requirements on firms for them to qualify to do business;
  - Require unnecessary experience or excessive bonding;
  - Use noncompetitive pricing practices between firms or between affiliated companies;
  - Execute noncompetitive contracts to consultants that are on retainer contracts;
  - Authorize, condone, or ignore organizational conflicts of interest;
  - Specify only a brand name product without allowing vendors to offer an equivalent;
  - Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
  - Engage in any arbitrary action during the procurement process; or,
  - Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

***LA CONTE ENGINEERING***  
***Civil Engineering Design & Consulting***

- "Except in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, as required by 2 C.F.R. 200.319(b), we cannot use a geographic preference when procuring commodities or services under the HMGP grant agreement.
- We will review and advise to assure that any procurement involving invitations to bid (i.e., sealed bids) is in accordance with 2 C.F.R. 200.320(c) as well as section 287.057(1)(a), Florida Statutes.
- We will review and advise to assure that any procurement involving requests for proposals (i.e., competitive proposals) is in accordance with 2 C.F.R. 200.320(d) as well as section 287.057(1)(b), Florida Statutes.
- For each subcontract, we will provide a written statement to FDEM as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the TOPB shall comply with the requirements of 2 C.F.R. 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

LaConte Engineering will also specifically coordinate with FDEM and FEMA, as needed, to comply with the HMGP grant requirements and maintain reimbursement eligibility on the following:

- Review, revise, and forward the certifications regarding debarment, suspension, ineligibility, and voluntary exclusion to FDEM, and assist in getting them completed by bidders.
- Review and recommend revisions, as needed, and submit bid tabulations to FDEM.
- Review and provide guidance in the TOPB's contractor selection process, including coordination and meetings, as needed.
- Provide recommendations and forward the notice to proceed and purchase order(s) to FDEM.
- Provide consultation as needed and submit signed contracts to FDEM for HMGP grant reimbursement record.
- Review and recommendations on cost and increases from the HMGP grant agreement and coordinate with FDEM and FEMA.
- Provide consultation and coordination with FDEM and FEMA on eligibility for possible additional grant funding/increases.
- Attend meetings, participate in phone calls, and email correspondence with FDEM and FEMA to address the TOPB requirements and responsibilities as specified in the HMGP grant agreement and promote project cost reimbursements.

TASK 2 – Services provided over a 24-month period for a TOTAL ESTIMATED FEE \$60,000.00

*Therefore, billing is anticipated to be approximately \$2,500 per month.*

**Task 3 – Grant Reporting:**

LaConte Engineering will obtain and review the project status in order to prepare the required Quarterly Reports, as well as Milestones and Activities reports to demonstrate/report project progress and compliance with the HMGP grant. LaConte Engineering will also monitor project

***LA CONTE ENGINEERING***  
***Civil Engineering Design & Consulting***

modifications, including those due to unanticipated construction issues as well as those resulting from the compliance review.

TASK 3 – Services provided over a 24-month period for a TOTAL ESTIMATED FEE \$56,200.00

*Therefore, billing is anticipated to be approximately \$2,342 per month.*

**Task 4 – Requests for Reimbursement (RFR) Documentation:**

LaConte Engineering will request, obtain, review all invoices, and proof of payment documentation and prepare quarterly requests for reimbursement (RFR) concurrent with the submission of quarterly reports.

TASK 4 – Services provided over a 24-month period for a TOTAL ESTIMATED FEE \$62,200.00

*Therefore, billing is anticipated to be approximately \$2,592 per month.*

**Task 5 – Final Closeout Compliance:**

LaConte Engineering will consult with BCI in the preparation and submittal of the Final Construction Management Plan to the TOPB after completion of the construction services phase of the project. LaConte Engineering will review the draft Final Construction Management Plan to ensure it is in accordance with the HMGP guidelines and provide recommendations for issues of concern.

TASK 5 – Services provided over the final 4-month period for a TOTAL ESTIMATED FEE \$30,000.00

*Therefore, billing is anticipated to be approximately \$7,500 per month during this period.*

**TIME OF SERVICE**

These services will begin upon acceptance as confirmed with the receipt of a signed proposal or issued PO. Services are anticipated to begin in August 2021 or during the TOPB selection of the project contractor and continue through construction completion scheduled for a duration of 24 months.

**FEE SCHEDULE**

These services will be provided for a TOTAL FEE NOT TO EXCEED \$236,630, based on the time required by the following positions for these services using our current hourly labor rates (Exhibit B attached):

<u>Position</u>	<u>Rate</u>	<u>Hours</u>	<u>Estimate</u>
Consultant/Program Manager	\$150	373	\$55,950.
Project Manager	\$125	800	\$100,000.
Project Analyst	\$110	488	\$53,680.
Operations Specialist	\$75	360	\$27,000.
			<u>\$236,630.</u>

All non-labor related project costs (including travel, lodging, and per diem) are included in the above fees.



***LACONTE ENGINEERING***  
***Civil Engineering Design & Consulting***

Invoices shall be based on percentage complete of each task with the Total Fee as follows:

<u>FEMA Grant Administrator</u>	<u>Total NOT TO EXCEED</u>
Construction Phase Services	\$236,630

Respectfully submitted,

  
\_\_\_\_\_  
Patrick LaConte, PE CFM  
*LaConte Engineering*

7/26/21  
Date: \_\_\_\_\_



**LA CONTE ENGINEERING**  
**Civil Engineering & Disaster Consulting**  
2440 SE Federal Hwy, Suite W, Stuart, FL 34994  
(772) 215-0354 • [placonte@laconteengineering.com](mailto:placonte@laconteengineering.com)  
FL CA License No. 30922

## **Exhibit B**

### **FEE SCHEDULE**

April 27, 2021

<b><u>POSITION</u></b>	<b><u>HOURLY RATE</u></b>
Principal/Consultant/Program Manager	\$150.00/hour
Project Manager / Senior Engineer/Planner/Analyst	\$125.00/hour
Project Engineer/Planner/Analyst	\$110.00/hour
Senior Specialist	\$110.00/hour
Project Designer/Specialist	\$100.00/hour
Estimator/Inspector/Technician	\$80.00/hour
Operations Manager/Specialist	\$75.00/hour
Engineer's Assistant	\$60.00/hour
Administrative Assistant	\$ 55.00/hour
<b><u>Supplemental</u></b>	
Expert Witness (4 hours minimum per appearance)	\$250.00/hour
Senior GIS Professional Public Adjuster	\$150.00/hour

**Subconsultants** – All sub-consultant project labor to be billed with 5% mark-up for administrative and insurance costs.

**Non-labor Related Project Costs** – Unless otherwise stated in the agreement, all non-labor related project costs (including travel, lodging, and per diem) to be billed at cost without mark-up. Travel, lodging, and per diem to be in accordance with Section 112.061, Florida Statutes.

**General Conditions** – The hourly labor rates include all applicable overhead and profit.

EXHIBIT "A"

Town of Palm Beach  
Townwide Overhead Utility Undergrounding  
Phase 5 North and South

---

**Exceptions & Clarifications - July 14, 2021**

---

**GENERAL**

- 1 Scope of work is based on Bid Set Plans received 5/3/2021 for the Townwide Overhead Utility Undergrounding - Phase 5 North / South .Complete plan log is included with this submittal.
- 2 Guaranteed not to exceed pricing is based on a project start date of October 1, 2021. Project duration for Townwide Overhead Utility Undergrounding - Phase 5 North shall be 18 months from notice to proceed. Project duration for Townwide Overhead Utility Undergrounding - Phase 5 South shall be 24 months from notice to proceed.
- 3 Guaranteed not to exceed pricing is based on the Town's contractor(s) work being performed between the hours 8:00 AM and 6:00 PM Monday through Friday. December 1, 2021 through April 17, 2022 work hours are based on 9:00 AM to 5:00 PM Monday through Friday. From April 18, 2022 through November 30, 2022 Regularly work hours shall be from 8:00 AM to 6:00 PM Monday through Friday. December 1, 2022 through April 9, 2023 work hours shall be 9:00 AM to 5:00 PM Monday through Friday. From April 10, 2023 through September 30, 2023 Regularly scheduled work hours shall be from 8:00 AM to 6:00 PM Monday through Friday.
- 4 The Town's contractor(s) may require night, weekend or holiday work beyond the regularly scheduled work hours stated in #3 above which may be necessary due to emergency, delay or makeup time. These hours are not part of the guaranteed not to exceed price and shall be additionally invoiced accordingly.
- 5 In the event that the terms and provisions of all attached Exhibits conflict with or are omitted from the terms and provisions of this Contract, the terms and provisions of the attached Exhibits shall govern with respect to the performance of the work.
- 6 Guaranteed not to exceed pricing is contingent on Phase 4 South GMP approval in the August 2021 Town Council Meeting. Overlap and economy of scale in both general conditions and management is reflected in this pricing.
- 7 This contract shall be authorized by the Town Council in the August 2021 Town Council meeting.

**FRANCHISE UTILITIES**

- 1 G.M.P. cost estimate does not include any design, engineering or installation fees which may be charged to the Owner by franchise utility companies. (electric, telephone, cable tv, gas)
- 2 The Construction Manager shall not assume liability or warranty any work performed by FPL, COMCAST, ATT, FPU and/or their subcontractors.
- 3 The project duration represents the work managed by the Construction Manager. Should the project exceed the scheduled duration due to the involvement of entities beyond our control (including but not limited to FPL, ATT, Comcast and Town's contractor(s)), additional management may be requested and deemed appropriate, if and only if it is mutually agreed upon by the Town of Palm Beach and Burkhardt Construction. This additional management will be invoiced accordingly.



