

MONROE COUNTY
Request For Proposals For Professional
Services
For Hurricane Irma
Marine Debris Monitoring And Related Services



BOARD OF COUNTY COMMISSIONERS

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Roman Gastesi, Jr.

CLERK OF THE CIRCUIT COURT

Kevin Madok

May 2018

PREPARED BY:

Monroe County Sustainability Department
Rhonda Haag

NOTICE OF REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN that on **Thursday, May 24, 2018, at 3:00 P.M.**, the Monroe County Purchasing Office will receive and open sealed responses for the following:

**HURRICANE IRMA
MARINE DEBRIS MONITORING AND RELATED SERVICES
MONROE COUNTY, FLORIDA**

Requirements for submission and the selection criteria may be requested from DemandStar by Onvia at www.demandstar.com OR www.monroecountybids.com or call toll-free at 1-800-711-1712. The Public Record is available at the Monroe County Purchasing Office located at The Gato Building, 1100 Simonton Street, Room 2-213, Key West, Florida. All Responses must be sealed and must be submitted to the Monroe County Purchasing Office by 3:00 P.M., on May 24, 2018.

Publication dates:

Citizen Sat., 05/05/18

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SECTION ONE: INSTRUCTION TO RESPONDENTS

1.01 INTRODUCTION/BACKGROUND

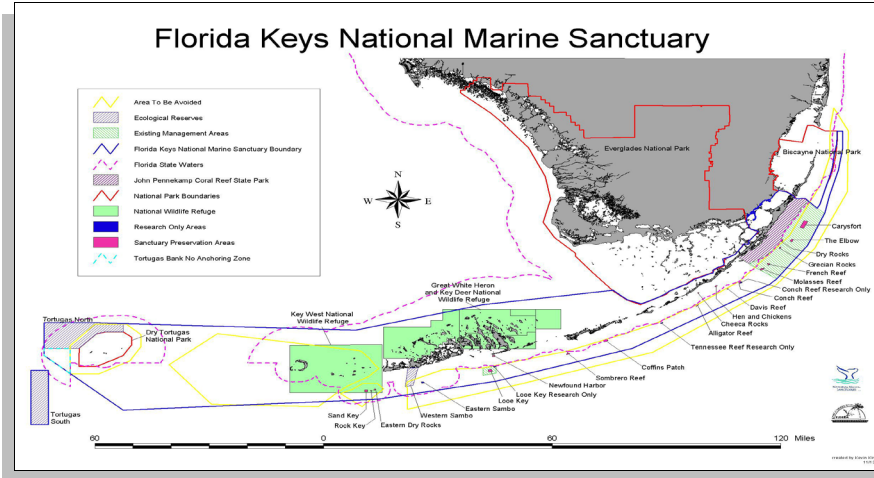
Monroe County (“County”) is located in southern Florida and encompasses the Florida Keys and portions of the Everglades National Park and the Big Cypress National Preserve. The scope of this RFP includes the portions of Unincorporated Monroe County, Marathon and Islamorada in the Florida Keys, which is comprised of a number of islands over 112 miles in length that extend from the southeastern tip of the Florida peninsula to Key West.

The United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) provides public assistance funds for debris removal and disposal operations following declared emergencies. In order to receive assistance, Monroe County desires to implement a marine debris removal monitoring program in June 2018 in response to Hurricane Irma, which made landfall in the Florida Keys in September 2017.. The County requires the services of a debris monitoring consultant to provide monitoring of marine debris recovery contractors and their operations. The primary responsibility of the consultant will be to provide trained debris monitors to oversee and document contractor activities and debris sites in compliance with NRCS requirements for reimbursement for marine debris operations.

The County has 103 canals that are eligible for NRCS funding in unincorporated Monroe County, Marathon and Islamorada. Efforts will be focused on these 103 canals. Maps showing the location of the canals where the County anticipates the work to be performed are collectively attached as Attachment A. Work may also be performed in nearby nearshore waters. The length of the anticipated work period is 220 days, although it could be shorter or longer for any of the 3 entities of Monroe County, Marathon, or Islamorada – based upon approval from NRCS.

The County is issuing a Request for Proposal (RFP) for the marine debris removal work. Work by the marine contractors is anticipated to include marine debris and sediment/silt removal, management of the debris sites including sorting and reduction, and haulout to the final disposal sites. The debris will include, among other things, vegetative and non-vegetative debris, C&D, white goods, sediment, derelict vehicles and vessels.

The **Florida Keys National Marine Sanctuary** is a U.S. National Marine Sanctuary in the Florida Keys. It includes the Florida Reef, the only barrier coral reef in North America and the third-largest coral barrier reef in the world. It also has extensive mangrove forest and seagrass fields. The marine sanctuary includes a 2,800 square nautical mile area surrounding the Keys and reaching into the Atlantic Ocean, Florida Bay and the Gulf of Mexico. The sanctuary was established in 1990. This background is being provided to remind potential respondents of the very sensitive marine environment in the Florida Keys in which the work will be performed.



1.02 COPIES OF RFP DOCUMENTS

- A. Only complete sets of RFP Documents will be issued and used in preparing responses. The County does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets.
- B. Complete sets of RFP Documents may be obtained in the manner and at the locations stated in the Notice of Request for Proposals.

1.03 DISQUALIFICATION OF RESPONDENT

- A. **NON-COLLUSION AFFIDAVIT:** Any person submitting a proposal in response to this invitation must execute the enclosed NON-COLLUSION AFFIDAVIT. If it is discovered that collusion exists among the Respondents, the proposals of all participants in such collusion shall be rejected, and no participants in such collusion will be considered in future bids for the same work.
- B. **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 proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit Proposals on leases or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Category Two: \$35,000.00

- C. DRUG-FREE WORKPLACE FORM: Any person submitting a bid or proposal in response to this invitation must execute the enclosed DRUG-FREE WORKPLACE FORM and submit it with his bid or proposal. Failure to complete this form in every detail and submit it with the bid or proposal may result in immediate disqualification of the bid or proposal.
- D. LOBBYING AND CONFLICT OF INTEREST CLAUSE: Any person submitting a bid or proposal in response to this invitation must execute the enclosed LOBBYING AND CONFLICT OF INTEREST CLAUSE and submit it with his bid or proposal. Failure to complete this form in every detail and submit it with the bid or proposal may result in immediate disqualification of the bid or proposal.

1.04 EXAMINATION OF RFP DOCUMENTS

- A. Each Respondent shall carefully examine the RFP and other contract documents, and inform himself thoroughly regarding any and all conditions and requirements that may in any manner affect cost, progress, or performance of the work to be performed under the contract. Ignorance on the part of the Respondent shall in no way relieve him of the obligations and responsibilities assumed under the contract.
- B. Should a Respondent find discrepancies or ambiguities in, or omissions from, the specifications, or should he be in doubt as to their meaning, he shall at once notify the County.

1.05 INTERPRETATIONS, CLARIFICATIONS, AND ADDENDA

No oral interpretations will be made to any Respondent as to the meaning of the contract documents. Any inquiry or request for interpretation received *in writing ten (10)* or more days prior to the date fixed for opening of responses will be given consideration. Written inquiries should be emailed to Rhonda Haag at Haag-Rhonda@MonroeCounty-FL.gov . All such changes or interpretation will be made in writing in the form of an addendum and, if issued, will be posted on DemandStar and a notification will be furnished by DemandStar to all known prospective Respondents listed as planholder as of the day when the Addendum is issued. Each Respondent shall acknowledge receipt of such addenda in their Proposal. In case any Respondent fails to acknowledge receipt of such addenda or addendum, his response will nevertheless be construed as though it had been received and acknowledged and the submission of his response will constitute acknowledgment of the receipt of same. All addenda are a part of the contract documents and each Respondent will be bound by such addenda, whether or not received by him. It is the responsibility of each Respondent to verify that he has received all addenda issued before responses are opened.

1.06 GOVERNING LAWS AND REGULATIONS

The Respondent is required to be familiar with and shall be responsible for complying with all federal, state, and local laws, ordinances, rules, and regulations that in any manner affect the work. NRCS knowledge is desirable. Knowledge of business tax requirements and the procedure for getting authorization to do business in Monroe County and municipalities within Monroe County are the responsibility of the Respondent.

Excerpts from Monroe County Policy 202.4.6

Due to the physical structure, depth, and orientation of existing canals, water quality problems have been caused which cannot be improved with wastewater treatment and stormwater management practices alone. To implement the 2013 Monroe County Canal Management Master Plan and improve water quality in artificial canals, the County is developing canal restoration projects to improve tidal flushing, increase dissolved oxygen concentrations as identified in the surface water quality criteria in Ch. 62-302.530, F.A.C., and remove accumulated nutrients and decomposing organic material.

For this policy, hydraulic (vacuum) dredging shall be considered the preferred means of removal of the organic material. If hydraulic dredging is not proposed to accomplish the organic material removal, a public hearing before the Board of County Commissioners (BOCC) shall be required prior to issuance of a county permit. The BOCC shall hold a public hearing on the request to use an alternative dredging methodology and shall consider the cost, rationale, compatibility, complications and public comments. The public hearing shall provide the applicant the opportunity to address the issues regarding the proposed canal restoration project, including but not limited to, sediment size, logistical/accessibility limitations, obstructions and/or equipment constraints. The BOCC may grant, grant with conditions or deny the request to use an alternative dredging methodology.[Ordinance 001-2015, 15-2ACSC-NOI-4401-(A)-(I)]

1.07 PREPARATION OF RESPONSES

Signature of the Respondent: The Respondent must sign the response forms in the space provided for the signature. If the Respondent is an individual, the words “doing business as _____”, or “Sole Owner” must appear beneath such signature. In the case of a partnership, the signature of at least one of the partners must follow the firm name and the words “Member of the Firm” should be written beneath such signature. If the Respondent is a corporation, the title of the officer signing the Response on behalf of the corporation must be stated along with the Corporation Seal Stamp and evidence of his authority to sign the Response must be submitted. The Respondent shall state in the response the name and address of each person having an interest in the submitting entity.

1.08 SUBMISSION OF RESPONSES

- A. Two (2) signed originals and three (3) copies of each response shall be submitted, plus an electronic copy of the response on a thumb drive or CD-ROM.
- B. The response shall be submitted in a sealed envelope clearly marked on the outside, with the Respondents name and “**Sealed Proposal for Hurricane Irma Marine Debris Monitoring and Related Services**”, addressed to the entity and address stated in the Notice of Request for Proposals, on or before 3:00 P.M. local time on May 24, 2018.. If sent by mail or by courier, the above-mentioned envelope shall be enclosed in another envelope addressed to the entity and address stated in the Notice of Request for Proposals. Faxed or e-mailed statements of qualifications shall be automatically rejected. Responses will be received until the date and hour stated in the Notice of Request for Proposals.

- C. Each Respondent shall submit with his Response the required evidence of his qualifications and experience.

1.09 CONTENT OF SUBMISSION

The proposal submitted in response to this RFP shall be printed on 8-1/2" x 11" white paper and bound; it shall be clear and concise and provide the information requested herein. Statements submitted without the required information will not be considered. Responses shall be organized as indicated below. The Respondent should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited. Each Respondent must submit adequate documentation to certify the Respondent's compliance with the County's requirements. Respondents should focus specifically on the information requested. Additional information, unless specifically relevant, may distract rather than add to the Respondent's overall evaluation.

The following information, **at a minimum**, shall be included in the Submittal:

A. COVER PAGE

A cover page that states "**PROPOSAL RESPONSE – HURRICANE IRMA MARINE DEBRIS MONITORING AND RELATED SERVICES**" The cover page should contain Respondent's name, address, telephone number, and the name of the Respondent's contact person.

B. Tabbed Sections

TAB 1. EXECUTIVE SUMMARY

The Respondent shall provide a narrative of the firm's qualities and capabilities that demonstrate how the firm will work with the County to fulfill the requirements of the scope of work. Describe the firm's use of technology in the office and in the field and how it will be used to complete scope of work. Describe the firm's methodology for working in the Florida Keys, given the extensive amount of marine field work that will be required, as well as the firm's experience working with Federal and State disaster agencies, particularly NRCS experience.

TAB 2. RELEVANT EXPERIENCE AND PAST PERFORMANCE ON SIMILAR PROJECTS

The Respondent shall describe the composition and structure of the firm (sole proprietorship, corporation, partnership, joint venture) and include names of persons with an interest in the firm.

The Respondent shall provide a project history of the firm or organization demonstrating documented experience with monitoring projects that are similar in scope and size to the services described in this RFP, specifically monitoring for marine debris clearing, hydraulic dredging, TDMA site management and hauling. List similar projects or activities

specifically completed in the Florida Keys that indicate familiarity and an understanding of the canal systems in the Keys and the conditions of the canals and nearshore waters. The Respondent shall describe any experience complying with USDA NRCS requirements. Describe experience in monitoring debris removal projects in the Keys or other sensitive marine environments, and other similar projects.

Describe experience in monitoring hydraulic dredging of organic silt and sediment removal, dewatering methods and disposal, particularly in the Florida Keys or other sensitive marine environments, and how it was ensured the methods met all local, state and federal requirements.

Describe experience in obtaining permits for the above referenced type of projects, particularly hydraulic dredging.

Each Respondent shall provide a list of past projects that are the same or similar to the scope of the proposed project. The list should include the information below:

- Name and full address of referenced project and organization
- Name and telephone number of Contact person for contract
- Telephone number(s)
- Date of initiation and completion of contract for referenced project
- Brief summary of the project and services including a comparison to those services sought by this RFP.

The Respondent shall provide at least two written references from a Florida local government or governmental entity *other than Monroe County* for which the Respondent has provided the same or similar services during the past three years. Each reference shall include, at a minimum, the information listed above..

TAB 3. PROJECT APPROACH

The Respondent shall describe the marine debris monitoring services that the firm is able to provide and explain in detail how these services will be accomplished. The description should include details of marine debris field operations, data management operations, methodology for complying with and responding to requirements of state and federal disaster agencies including NRCS, , and a response time associated with the services.

TAB 4. STAFFING FOR THIS PROJECT & QUALIFICATIONS OF KEY PERSONNEL

The Respondent shall include an organizational chart of all personnel and consultants to be used to complete the scope of work. Resumes for each individual, including education, background and experience should be included. This section should show evidence of the firm's ability to manage tasks simultaneously and expeditiously; approach to problem/task resolution and teamwork. Include the location of the main office and the location of the office proposed to work on this project. Explain the experience the staff have in working in the Keys or similar areas with similar type projects.

Describe experience the staff have in obtaining permits for the above referenced type of projects in the Keys or similar sensitive marine environments.

Local Preference consideration does not apply on this Request for Proposals.

TAB 5. FINANCIAL INFORMATION AND LITIGATION

The Respondent will provide the following information:

- (1) A list of the person's or entity's shareholders with five percent or more of the stock or, if a general partnership, a list of the general partners; or, if a limited liability company, a list of its members; or, if a solely owned proprietorship, names(s) of owner(s);
- (2) A list of the officers and directors of the entity;
- (3) The number of years the person or entity has been operating and, if different, the number of years it has been providing the services, goods, or construction services called for in the bid specifications (include a list of similar projects);
- (4) The number of years the person or entity has operated under its present name and any prior names;
- (5) A print out of the "Detail by Entity Name" screen from the Respondent's listing in www.sunbiz.org;
- (6) A copy of the Respondent's Annual Report that is submitted to the Florida Secretary of State;
- (7) Answers to the following questions regarding claims and suits:
 - a. Has the person, principals, entity, or any entity previously owned, operated or directed by any of its officers, major shareholders or directors, ever failed to complete work or provide the goods for which it has contracted? Answer yes or no. If yes, provide details;
 - b. Are there any judgments, claims, arbitration proceeding or suits pending or outstanding against the person, principal of the entity, or entity, or any entity previously owned, operated or directed by any of its officers, directors, or general partners? Answer yes or no. If yes, provide details;
 - c. Has the person, principal of the entity, entity, or any entity previously owned, operated or directed by any of its officers, major shareholders or directors, within the last five years, been a party to any lawsuit, arbitration, or mediation with regard to a contract for services, goods or construction services similar to those requested in the specifications with private or public entities? Answer yes or no. If yes, provide details;
 - d. Has the person, principal of the entity, or any entity previously owned, operated or directed by any of its officers, owners, partners, major shareholders or directors, ever initiated litigation against the county or been sued by the county in connection with a contract to provide services, goods or construction services? Answer yes or no. If yes, provide details;
 - e. Whether, within the last five years, the owner, an officer, general partner, principal, controlling shareholder or major creditor of the person or entity was an officer, director, general partner, principal, controlling shareholder or major creditor of any other entity that failed to perform services or furnish goods similar to those sought in the request for competitive solicitation; Answer yes or no. If yes, provide details;
- (8). **Customer references** (minimum of three), including name, current address and current telephone number;

- (9). **Credit references** (minimum of three), including name, current address and current telephone number;
- (10). **Financial statements** for the prior three years for the responding entity or for any entity that is a subsidiary to the responding entity.

TAB 6. COST SUMMARY

The respondent shall provide a cost summary for the project. The summary should be based on a sample 30 day monitoring period for Monroe County (two sites) , Islamorada and Marathon. However, the rates supplied will apply during the life of the contract. The summary should include job titles (i.e. project manager, field supervisor, collection monitor, tower monitor), a description of duties that will be performed by each position, the approximate number of each type of staff that will be required, and an hourly billing rate for each position.

Hourly billing rate for each position shall be inclusive of reimbursable expenses. Reimbursable expenses will include transportation (other than airfare), lodging, meals and incidentals. Airfare will be billed to the County at the Respondent's cost.

TAB 7. COUNTY FORMS

Respondent shall complete and execute the forms specified below and found at the designated pages in this **RFP**, and shall include them in the section tabbed 7:

- Form**
- Response Form
- Lobbying and Conflict of Interest Clause
- Non-Collusion Affidavit
- Drug Free Workplace Form
- Public Entity Crime Statement
- Respondent's Insurance and Indemnification Statement
- Insurance Agent's Statement

Copies of all professional licenses and business tax receipts shall be included in this section.

1.10 MODIFICATION OF RESPONSES

Written modification will be accepted from Respondents if addressed to the entity and address indicated in the Notice of Request for Proposals and received prior to Proposal due date and time. Modifications must be submitted in a sealed envelope clearly marked on the outside, with the Respondents name and **"Modification to Sealed Proposal for Hurricane Irma Marine Debris Monitoring and Related Services"**. If sent by mail or by courier, the above-mentioned envelope shall be enclosed in another envelope addressed to the entity and address stated in the Notice of Request for Proposals. Faxed or e-mailed modifications shall be automatically rejected.

1.11 RESPONSIBILITY FOR RESPONSE

The Respondent is solely responsible for all costs of preparing and submitting the response, regardless of whether a contract award is made by the County.

1.12 RECEIPT AND OPENING OF RESPONSES

Responses will be received until the designated time and will be publicly opened. Respondents names shall be read aloud at the appointed time and place stated in the **Notice of Request for Proposals**. Monroe County’s representative authorized to open the responses will decide when the specified time has arrived and no responses received thereafter will be considered. No responsibility will be attached to anyone for the premature opening of a response not properly addressed and identified. Respondents or their authorized agents are invited to be present.

1.13 DETERMINATION OF SUCCESSFUL RESPONDENT

Following the receipt of responses, the selection committee will meet in a publicly noticed meeting and evaluate the responses based on the criteria and point total below. The selection committee will rank the responses. The County reserves the right to reject any and all responses and to waive technical errors and irregularities as may be deemed best for the interests of the County. Responses that contain modifications, are incomplete, unbalanced, conditional, obscure, or that contain additions not requested or irregularities of any kind, or that do not comply in every respect with the Instruction to Respondent and the contract documents, may be rejected at the option of the County.

Each TAB section will be given points used to score and evaluate firms and individuals. The point structure is as follows:

TAB	CRITERION	MAX POINTS
1	Executive Summary	- 5 to 0
2	Relevant Experience And Past Performance	30
3	Project Approach	10
4	Staffing	10
5	Financial Information	10
6	Pricing And Cost Summary	40
7	Forms	-5 to 0
	TOTAL	100

1.14 AWARD OF CONTRACT

- A. The County reserves the right to award separate contracts for portions of the work, waive any irregularity in any response, or to re-advertise for all or part of the work contemplated
- B. The County also reserves the right to reject the response of a Respondent who has previously failed to perform properly or to complete contracts of a similar nature on time, or who, after investigation of references or other criteria, does not meet County standards.
- C. The recommendation of the committee may be presented to the Board of County Commissioners of Monroe County, Florida, for final selection. Negotiations will be undertaken with the Respondents as ranked.

1.15 EXECUTION OF CONTRACT

The Respondent with whom a contract is negotiated shall be required to return to the County four executed counterparts of the prescribed contract together with the required certificates of insurance.

1.16 CERTIFICATE OF INSURANCE AND INSURANCE REQUIREMENTS

The Respondent shall be responsible for all necessary insurance coverage as indicated below. Certificates of Insurance must be provided to Monroe County within fifteen (15) days after award of contract, with Monroe County BOCC listed as additional insured as indicated. If the proper insurance forms are not received within the fifteen (15) day period, the contract may be awarded to the next selected Respondent/Proposer. Policies shall be written by companies licensed to do business in the State of Florida and having an agent for service of process in the State of Florida. Companies shall have an A.M. Best rating of VI or better.

Worker's Compensation	Statutory Limits
Employers' Liability Insurance	\$1,000,000 Accident \$1,000,000 Disease, policy limits \$1,000,000 Disease each employee
General Liability, including Premises Operation Products and Completed Operations Blanket Contractual Liability Personal Injury Liability Expanded Definition of Property Damage	\$1,000,000 Combined Single Limit
Vehicle Liability (Owned, non-owned and hired vehicles)	\$1,000,000 per Occurrence \$1,000,000 Combined Single Limit

Professional Liability	\$1,000,000 per Occurrence
	\$2,000,000 Aggregate

Monroe County shall be named as an Additional Insured on the General Liability and Vehicle Liability policies.

1.17 INDEMNIFICATION

The Respondent covenants and agrees to indemnify, hold harmless and defend Monroe County, its commissioners, officers, employees, agents and servants from any and all claims for bodily injury, including death, personal injury, and property damage, including damage to property owned by Monroe County, and any other losses, damages, and expenses of any kind, including attorney’s fees, court costs and expenses, which arise out of, in connection with, or by reason of services provided by the Respondent or any of its Subconsultant(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the Respondent, its Subconsultant(s) in any tier, their officers, employees, servants or agents.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the Respondent’s failure to purchase or maintain the required insurance, the Respondent shall indemnify the County from any and all increased expenses resulting from such delay. Should any claims be asserted against the County by virtue of any deficiency or ambiguity caused by the Respondent, the Respondent agrees and warrants that the Respondent shall hold the County harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the County’s behalf.

The first ten dollars (\$10.00) of remuneration paid to the Respondent is consideration for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

This indemnification shall survive the expiration or earlier termination of the contract.

FDEM Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Emergency Management, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the (County) Agency’s sovereign immunity.

Commented [E1]: If you have FDEM agreement, then include this paragraph too.

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**Request For Waiver of
Insurance Requirements**

It is requested that the insurance requirements, as specified in the County's Schedule of Insurance Requirements, be waived or modified on the following contract:

Respondent: _____

Contract for: _____

Address of Respondent: _____

Phone: _____

Scope of Work: _____

Reason for Waiver: _____

Policies Waiver will apply to: _____

Signature of Respondent: _____

Approved _____ Not Approved _____

Risk Management: _____

Date: _____

County Administrator appeal: _____

Approved _____ Not Approved _____

Date: _____

Board of County Commissioners appeal: _____

Approved _____ Not Approved _____

Meeting Date: _____

Respondent

SIGNATURE

SECTION TWO: SCOPE OF WORK

2.1 Upon written authorization from the County the Consultant will perform the tasks outlined below to assist the County in responding to the aftermath of Hurricane Irma and its impacts on approximately 103 NRCS- eligible canals in unincorporated Monroe County, Islamorada and Marathon. All activities will comply with the requirements of the USDA National Resources Conservation Service (NRCS), US Fish and Wildlife, and any applicable federal or State laws and local ordinances.

This RFP covers monitoring work in canals and TDMA sites in unincorporated Monroe County, City of Marathon, and Village of Islamorada. The County will be the contracting party for all work, regardless if performed in the County or municipalities. Vendors who perform this work must segregate the costs for work performed in the two municipalities and submit separate invoices to the County, so that the County can pass along the costs to the municipalities.

2.2 Due to the accelerated timeline of the NRCS grant, the County anticipates that marine debris removal work will be performed in multiple locations simultaneously and that numerous TDMA sites will be operating simultaneously. In their proposal, the proposers should address how they are prepared to staff multiple sites at the same time and in their pricing indicate if any economies of scale are recognized..

The Consultant shall designate on the work site(s) a qualified accessible supervisor(s) or project manager. At least one accessible and designated supervisor in each area of operation shall have full authority to act on behalf of the consultant and its subcontractors and all communications given to the supervisor in writing by the County's authorized representative shall be as binding as if given to the selected firm. It is anticipated there will be four operational TDMA sites: Key Largo, Big Pine Key, Marathon and Islamorada.

2.3 The Consultant shall provide the following services:

1. Provide immediate general program management services with regards to marine debris collection and disposal activities within the County;
2. Provide immediate contract monitoring services related to managing the activities of the County's marine debris contractor(s), including but not limited to:
 - Monitor contractor activity to confirm compliance with NRCS requirements and all state statutes and local ordinances;
 - Ensure proper equipment is mobilized and used, and ensure proper loading techniques are utilized;
 - Monitor marine debris site management for proper segregation of debris, adherence to site permit requirements;
 - Ensure adherence to safety procedures
 - Monitor Temporary Debris Management Areas (TDMA) ,site set-up and restoration;
 - Measure and certify truck capacities and retain records of each vehicle as required by NRCS ;
 - Investigate, document and resolve property damage complaints from the public;

- Conduct end of day duties, such as verifying all trucks have left the disposal site, addressing daily safety reports and corrective action recommendations, and locking down of the facility.
- Monitor the activities conducted under local, state and federal permit requirements for applicable marine debris removal work, including but not limited to, marine debris clearing, organic silt removal, hauling and vessel removal.
- Ability to directly provide side scan sonar or to monitor the debris removal contractor's use of side scan sonar to ensure maximum cost efficiency in combination with maximum effectiveness. Ability to read and interpret the results.
- Monitor organic silt and sediment removal, dewatering methods and disposal – ensuring it is removed, dewatered, and disposed of in methods meeting all local, state and federal requirements
- Provide a dive team and underwater cameras to survey the work under the canal surface.
- Monitor the marine waters for threatened and endangered species, take immediate appropriate protection measure, report to the appropriate County, State and Federal officials

3. Provide marine debris collection and disposal site monitoring services at staging areas, Temporary Debris Management Areas and final disposal sites in accordance with local, state, federal and NRCS requirements, including but not limited to:

- Monitor marine debris collection activities to ensure debris eligibility (type and location of collection), provide accurate load tickets with all required information, document damage to property by contractor;
- Monitor staging areas and TDMA sites to ensure entry by certified trucks only; provide accurate determination and documentation of marine debris quantities for debris brought into site and reduced debris leaving the site for final disposal.
- Ensure proper soil sampling of staging areas and TDMA's as necessary, before and after use by debris contractors.
- Monitor compliance by debris contractors with environmental regulations (including but not limited to regulations issued by DEP), DDMS site permits or authorizations, and requirements of any other permits or authorizations (including but not limited to Army Corps of Engineers) and report non-compliance.
- Monitor and document trucks entering landfill/final disposal sites to confirm and document quantities brought to final disposal.
- Survey the affected areas for special situations or emergency needs, including but not limited to, identifying navigational hazards, hazardous trees, construction and demolition (C&D) debris in the waters, or other potentially hazardous marine situations. The consultant

will document locations, track and coordinate the appropriate dispatch of equipment and make frequent reports to the County on any post-event remedial action.

4. Provide data management of all collection and disposal tickets;
5. Provide the County with daily operating reports that include, at a minimum, information regarding specific canals and nearshore waters of the county where collection has occurred, number of crews working, quantities of hours worked by the contractors, quantities of debris by type collected from canals and nearshore waters; marine debris quantities accepted at or shipped from each TDMA site, marine debris quantities shipped to recycling centers or final disposal site and details of damage complaints and any operational/safety issues;
6. Review and approve debris removal contractor invoices submitted to the County;
7. Respond to questions regarding operations and documentation, as needed, during NRCS review and close out processes.

2.4 Additional Services

The following services will be provided upon authorization by the County:

- A. Providing technical and permitting assistance associated with the need to locate additional TDMA sites when requested by the County.
- B. Collecting baseline data, per local, state and federal requirements, from the designated emergency debris management sites prior to opening these sites.
- C. Assisting the County with obtaining necessary local, state and federal permits for the designated emergency debris management sites and for any hydraulic dredging activities to take place
- D. Conducting ongoing environmental data collection per local, state and federal requirements for the designated emergency debris management sites.
- E. Providing technical, clerical, and information technology assistance to the County for completing any and all forms necessary for reimbursement from State or Federal agencies, including USDA NRCS, relating to eligible costs arising out of the disaster recovery effort. This may include, but is not limited to, the timely completion and submittal of reimbursement requests, and preparing replies to any and all agency requests, inquiries or potential denials.

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SECTION THREE: DRAFT CONTRACT

**AGREEMENT FOR
CONSULTING SERVICES
FOR
HURRICANE IRMA MARINE DEBRIS MONITORING AND DISASTER RELATED
SERVICES**

This Agreement (“Agreement”) made and entered into this ____ day of _____, 2018 by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida, 33040, its successors and assigns, hereinafter referred to as "COUNTY," through the Monroe County Board of County Commissioners (“BOCC”),

AND

_____, a _____ of the State of _____, whose address is _____ its successors and assigns, hereinafter referred to as "CONSULTANT",

WITNESSETH:

WHEREAS, the canals in Monroe County have been negatively impacted by Hurricane Irma; and

WHEREAS, the County applied to USDA NRCS for funding of marine debris removal monitoring and related services, which includes Islamorada and Marathon; and

WHEREAS, the NRCS has declared a minimum of 103 canals eligible for NRCS funding; and

WHEREAS, the COUNTY issued a solicitation for Marine Debris Monitoring and related work; and

WHEREAS, COUNTY desires to employ the professional services of CONSULTANT for Hurricane Irma Marine Debris Monitoring and Related Services; and

WHEREAS, CONSULTANT has agreed to provide professional services which shall include but not be limited to providing hurricane marine debris monitoring services and program management services, which services shall collectively be referred to as the “Project”;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONSULTANT agree as follows:

FORM OF AGREEMENT

ARTICLE 1

1.1 REPRESENTATIONS AND WARRANTIES

By executing this Agreement, CONSULTANT makes the following express representations and warranties to the COUNTY:

- 1.1.1 The CONSULTANT shall maintain all necessary licenses, permits or other authorizations necessary to act as CONSULTANT for the Project until the CONSULTANT'S duties hereunder have been fully satisfied;
- 1.1.2 The CONSULTANT has become familiar with the Project site and the local conditions under which the Work is to be completed, including the County's estimated 300 impacted canals and nearshore waters.
- 1.1.3 The CONSULTANT shall prepare all documentation required by this Agreement in such a manner that they shall be accurate, coordinated and adequate for use in verifying work completed by debris contractors and associated costs and shall be in conformity and comply with all applicable law, codes and regulations. The CONSULTANT warrants that the documents prepared as a part of this Agreement will be adequate and sufficient to document costs in a manner that is acceptable for reimbursement by government agencies, therefore eliminating any additional cost due to missing or incorrect information;
- 1.1.4 The CONSULTANT assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.
- 1.1.5 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In providing all services pursuant to this agreement, the CONSULTANT shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the CONSULTANT.
- 1.1.6 At all times and for all purposes under this agreement the CONSULTANT is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the CONSULTANT or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.
- 1.1.7 The CONSULTANT shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.

1.1.8 The effective date of this Agreement shall be the later of **June 20, 2018** or the last day on which this Agreement is signed by both of the parties.

The term of the Agreement shall be for a one (1) year period, unless otherwise terminated as provided herein. The COUNTY shall have the option of extending the AGREEMENT at the same terms and conditions with approval from the COUNTY'S Governing Board if needed for additional Hurricane Irma marine debris removal monitoring. Such extension shall be in the form a written Amendment to the Agreement executed by both parties.

ARTICLE II
SCOPE OF BASIC SERVICES

2.1 DEFINITION

CONSULTANT'S Scope of Basic Services consist of those described in Exhibit A to this Agreement. The CONSULTANT shall commence work on the services provided for in this Agreement promptly upon his receipt of a written notice to proceed from the COUNTY. The notice to proceed will be in the form of a task order and must contain a description of the services to be performed, and the time within which services must be performed.

2.2 CORRECTION OF ERRORS, OMISSIONS, DEFICIENCIES

The CONSULTANT shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the CONSULTANT or its subconsultants, or both.

2.3 NOTICE REQUIREMENT

All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONSULTANT. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage pre-paid, to the COUNTY by certified mail, return receipt requested, to the following:

Mr. Roman Gastesi, Jr.
Monroe County Administrator
1100 Simonton Street, Room 2-205
Key West, Florida 33040

For the Consultant:

ARTICLE III
ADDITIONAL SERVICES

- 3.1 Additional services are services not included in the Scope of Basic Services.
- 3.2 If Additional Services are required the COUNTY shall issue a letter requesting and describing the requested services to the CONSULTANT. The CONSULTANT shall respond with a fee proposal to perform the requested services. Only after receiving a Task Order and a notice to proceed from the COUNTY, shall the CONSULTANT proceed with the Additional Services.

ARTICLE IV
COUNTY'S RESPONSIBILITIES

- 4.1 The COUNTY shall provide full information regarding requirements for the Project including physical location of work, county maintained roads, any available maps.
- 4.2 The COUNTY shall designate a representative to act on the COUNTY's behalf with respect to the Project. The COUNTY or its representative shall render decisions in a timely manner pertaining to documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANT'S services.
- 4.3 Prompt written notice shall be given by the COUNTY and its representative to the CONSULTANT if they become aware of any fault or defect in the Project or non-conformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.
- 4.4 The COUNTY shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CONSULTANT'S services and work of the contractors.
- 4.5 The COUNTY's review of any documents prepared by the CONSULTANT or its subconsultants shall be solely for the purpose of determining whether such documents are generally consistent with the COUNTY's criteria, as, and if, modified. No review of such documents shall relieve the CONSULTANT of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.
- 4.6 The COUNTY shall provide copies of necessary documents required to complete the work.
- 4.7 Any information that may be of assistance to the CONSULTANT that the COUNTY has immediate access to will be provided as requested.

ARTICLE V
INDEMNIFICATION AND HOLD HARMLESS

- 5.1 The CONSULTANT covenants and agrees to indemnify and hold harmless COUNTY/Monroe County and Monroe County Board of County Commissioners, its officers and employees from liabilities, damages, losses and costs, including but not limited

to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT, subcontractor(s) and other persons employed or utilized by the CONSULTANT in the performance of the contract.

- 5.2 The first ten dollars (\$10.00) of remuneration paid to the CONSULTANT is for the indemnification provided for above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement. Should any claims be asserted against the COUNTY by virtue of any deficiency or ambiguity in the plans and specifications provided by the CONSULTANT, the CONSULTANT agrees and warrants that he shall hold the COUNTY harmless and shall indemnify him from all losses occurring thereby and shall further defend any claim or action on the COUNTY'S behalf.
- 5.3 In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT'S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify COUNTY from any and all increased expenses resulting from such delays. Should any claims be asserted against COUNTY by virtue of any deficiencies or ambiguity in the plans and specifications provide by the CONSULTANT the CONSULTANT agrees and warrants that CONSULTANT hold the COUNTY harmless and shall indemnify it from all losses occurring thereby and shall further defend any claims or action on the COUNTY'S behalf.
- 5.4 The extent of liability is in no way limited to, reduced or lessened by the insurance requirements contained elsewhere within the Agreement.
- 5.5 This indemnification shall survive the expiration or early termination of the Agreement.

5.6 FDEM Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Emergency Management, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the (County) Agency's sovereign immunity.

Commented [E2]: If you have FDEM agreement, then include this paragraph too.

ARTICLE VI
PERSONNEL

6.1 PERSONNEL

The CONSULTANT shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the CONSULTANT, they shall perform the functions indicated next to their names. If they are replaced the CONSULTANT shall notify the COUNTY of the change immediately.

ARTICLE VII
COMPENSATION

7.1 PAYMENT SUM

7.1.1 The Contract Sum shall not exceed \$ _____ unless amended by formal approval of the Monroe County BOCC.

The COUNTY shall pay the CONSULTANT in current funds for the CONSULTANT’S performance of this Agreement based on rates negotiated and agreed upon and shown in Exhibit B to this Agreement.

7.2 PAYMENTS

7.2.1 For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONSULTANT shall be paid in accordance with assigned Tasks and completion of Tasks, based on submitted invoices. All invoices must meet NRCS standards and requirements.

- (A) If the CONSULTANT’S duties, obligations and responsibilities are materially changed by amendment to this Agreement after execution of this Agreement, compensation due to the CONSULTANT shall be equitably adjusted, either upward or downward;
- (B) As a condition precedent for any payment due under this Agreement, the CONSULTANT shall submit monthly, unless otherwise agreed in writing by the COUNTY, a proper invoice to COUNTY requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONSULTANT’S invoice shall describe with reasonable particularity the service rendered. The

CONSULTANT'S invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought at the COUNTY may require.

7.3 REIMBURSABLE EXPENSES

7.3.1 Reimbursable expenses include the following expenses incurred by the CONSULTANT in the interest of the project:

- a. Reimbursable expenses including transportation (excluding airfare), lodging, meals and incidentals are included in the hourly rates shown in Exhibit B for each position. Airfare will be billed to the County at the Consultant's cost.
- b. Cost of reproducing maps or drawings or other materials used in performing the scope of services;
- c. Postage and handling of reports.

7.3.2 All other expenses are non-reimbursable.

7.4 BUDGET

7.4.1 The CONSULTANT may not be entitled to receive, and the COUNTY is not obligated to pay, any fees or expenses in excess of the amount budgeted for this contract in each fiscal year (October 1 - September 30) by COUNTY's Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the COUNTY's Board of County Commissioners.

7.4.2 The COUNTY's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of contract initiation and its duration its duration and approval of NRCS and receipt of funds by NRCS.

ARTICLE VIII **INSURANCE**

8.1 The CONSULTANT shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT'S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the COUNTY from any and all increased expenses resulting from such delay.

8.2 The coverage provided herein shall be provided by an insurer with an A.M. Best rating of VI or better, that is licensed to business in the State of Florida and that has an agent for service of process within the State of Florida. The coverage shall contain an endorsement providing sixty (60) days' notice to the COUNTY prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY.

8.3 CONSULTANT shall obtain and maintain the following policies:

- A. Workers' Compensation insurance as required by the State of Florida, sufficient to respond to Florida Statute 440.
- B. Employers Liability Insurance with limits of \$1,000,000 per Accident, \$1,000,000 Disease, policy limits, \$1,000,000 Disease each employee.
- C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with One Million Dollars (\$1,000,000.00) combined single limit and One Million Dollars (\$1,000,000.00) annual aggregate.
- D. Commercial general liability, including Personal Injury Liability, covering claims for injuries to members of the public or damage to property of others arising out of any covered act or omission of the CONSULTANT or any of its employees, agents or subcontractors or subconsultants, including Premises and/or Operations, Products and Completed Operations, Independent Contractors; Broad Form Property Damage and a Blanket Contractual Liability Endorsement with One Million Dollars (\$1,000,000) per occurrence and annual aggregate.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported must extend for a minimum of 48 months following the termination or expiration of this contract.

- E. Professional liability insurance of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate. If the policy is a "claims made" policy, CONSULTANT shall maintain coverage or purchase a "tail" to cover claims made after completion of the project to cover the statutory time limits in Chapter 95 of the Florida Statutes.
- F. Jones Act or Watercraft coverage is required
- G. COUNTY shall be named as an additional insured with respect to CONSULTANT'S liabilities hereunder in insurance coverages identified in Paragraphs C and D.
- H. CONSULTANT shall require its subconsultants to be adequately insured at least to the limits prescribed above, and to any increased limits of CONSULTANT if so required by COUNTY during the term of this Agreement. COUNTY will not pay for increased limits of insurance for subconsultants.
- I. CONSULTANT shall provide to the COUNTY certificates of insurance or a copy of all insurance policies including those naming the COUNTY as an additional insured. The COUNTY reserves the right to require a certified copy of such policies upon request.

- J. If the CONSULTANT participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONSULTANT may be required to submit updated financial statements from the fund upon request from the COUNTY.

ARTICLE IX
MISCELLANEOUS

9.1 SECTION HEADINGS

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

9.2 OWNERSHIP OF THE PROJECT DOCUMENTS

The documents prepared by the CONSULTANT for this Project belong to the COUNTY and may be reproduced and copied without acknowledgement or permission of the CONSULTANT.

9.3 SUCCESSORS AND ASSIGNS

The CONSULTANT shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and the CONSULTANT, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

9.4 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

9.5 TERMINATION OR SUSPENSION

- A. In the event that the CONSULTANT shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this agreement after five days' written notification to the CONSULTANT.
- C. The COUNTY may cancel this Agreement without cause by giving the CONSULTANT sixty (60) days' written notice of its intention to do so.

Commented [E3]: You will need to reformat this section (9.5) and it should be paragraphs A, B, C, D & E.

Termination for Cause and Remedies: In the event of breach of any contract terms, the COUNTY retains the right to terminate this Agreement. The COUNTY may also terminate this agreement for cause with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, prior to termination, the COUNTY shall provide CONTRACTOR with five (5) calendar days' notice and provide the CONTRACTOR with an opportunity to cure the breach that has occurred. If the breach is not cured, the Agreement will be terminated for cause. If the COUNTY terminates this agreement with the CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due the CONTRACTOR under this agreement prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract; however, the COUNTY reserves the right to assert and seek an offset for damages caused by the breach. The maximum amount due to CONTRACTOR shall not in any event exceed the spending cap in this Agreement. In addition, the COUNTY reserves all rights available to recoup monies paid under this Agreement, including the right to sue for breach of contract and including the right to pursue a claim for violation of the COUNTY's False Claims Ordinance, located at Section 2-721 et al. of the Monroe County Code.

- D. Termination for Convenience: The COUNTY may terminate this Agreement for convenience, at any time, upon one (1) weeks' notice to CONTRACTOR. If the COUNTY terminates this agreement with the CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due the CONTRACTOR under this agreement prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract. The maximum amount due to CONTRACTOR shall not exceed the spending cap in this Agreement. In addition, the COUNTY reserves all rights available to recoup monies paid under this Agreement, including the right to sue for breach of contract and including the right to pursue a claim for violation of the COUNTY's False Claims Ordinance, located at Section 2-721 et al. of the Monroe County Code.

Commented [E14]: I changed to 60 days in my agreements

- E. Scrutinized Companies. For Contracts of any amount, if the County determines that the Contractor/Consultant has submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall have the option of (1) terminating the Agreement after it has given the Contractor/Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

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For Contracts of \$1,000,000 or more, if the County determines that the Contractor/Consultant submitted a false certification under Section 287.135(5), Florida Statutes, or if the Contractor/Consultant has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations in Cuba or Syria, the County shall have the option of (1) terminating the Agreement after it has given the Contractor/Consultant written notice and an

opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

9.6 CONTRACT DOCUMENTS

This contract consists of the Request for Proposals, any addenda, the Form of Agreement (Articles I-IX), the CONSULTANT'S response to the RFP, the documents referred to in the Form of Agreement as a part of this Agreement, and Exhibits A and B, and modifications made after execution by written amendment. In the event of any conflict between any of the Contract documents, the one imposing the greater burden on the CONSULTANT will control.

9.7 PUBLIC ENTITIES CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on contracts 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 public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

By signing this Agreement, CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any subconsultant has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

CONSULTANT will promptly notify the COUNTY if it or any subcontractor or subconsultant is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

9.8 MAINTENANCE OF RECORDS

CONSULTANT shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven years from

the termination of this agreement or for a period of three years from the date of submission of the final expenditure report in accordance with 2 CFR § 200.333, whichever is greater. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONSULTANT pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONSULTANT, the CONSULTANT shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the COUNTY.

9.9 GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, COUNTY and CONSULTANT agree that venue shall lie in the 16th Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body. This agreement shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

9.10 SEVERABILITY

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CONSULTANT agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9.11 ATTORNEY'S FEES AND COSTS

The COUNTY and CONSULTANT agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings.

9.12 BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONSULTANT and Subconsultants and their respective legal representatives, successors, and assigns.

9.13 AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

9.14 CLAIMS FOR FEDERAL OR STATE AID

CONSULTANT and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

9.15 ADJUDICATION OF DISPUTES OR DISAGREEMENTS

COUNTY and CONSULTANT agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

9.16 COOPERATION

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CONSULTANT agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CONSULTANT specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.17 NONDISCRIMINATION

CONSULTANT and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONSULTANT or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

During the performance of this Agreement, the CONTRACTOR, in accordance with *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C, agrees as follows:

- 1) 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) 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,

Commented [16]: Equal Employment Opportunity. When required by Federal program legislation, which includes FEMA grant and cooperative agreement programs.
Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
Key Definitions.
Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) 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.
- 6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such 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 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.

9.18 COVENANT OF NO INTEREST

CONSULTANT and COUNTY covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.19 CODE OF ETHICS

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse

of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

9.20 NO SOLICITATION/PAYMENT

The CONSULTANT and COUNTY warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONSULTANT agrees that the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

9.21 PUBLIC ACCESS.

Public Records Compliance. Contractor must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other “public record” materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this contract and related to contract performance. The County shall have the right to unilaterally cancel this contract upon violation of this provision by the Contractor. Failure of the Contractor to abide by the terms of this provision shall be deemed a material breach of this contract and the County may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney’s fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the contract.

The Contractor is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision. Pursuant to F.S. 119.0701 and the terms and conditions of this contract, the Contractor is required to:

- (1) Keep and maintain public records that would be required by the County to perform the service.
- (2) Upon receipt from the County’s custodian of records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records that would be required by the County to perform the service. If the Contractor transfers all public records to the

County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of records, in a format that is compatible with the information technology systems of the County.

(5) A request to inspect or copy public records relating to a County contract must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

If the Contractor does not comply with the County's request for records, the County shall enforce the public records contract provisions in accordance with the contract, notwithstanding the County's option and right to unilaterally cancel this contract upon violation of this provision by the Contractor. A Contractor who fails to provide the public records to the County or pursuant to a valid public records request within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

The Contractor shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

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, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE 1111 12TH Street, SUITE 408, KEY WEST, FL 33040.

9.22 NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONSULTANT and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

9.23 PRIVILEGES AND IMMUNITIES

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the

performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the COUNTY, except to the extent permitted by the Florida constitution, state statute, and case law.

9.25 NON-RELIANCE BY NON-PARTIES

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CONSULTANT and the COUNTY agree that neither the CONSULTANT nor the COUNTY or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION

CONSULTANT agrees to execute such documents as COUNTY may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONSULTANT shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made within one year following the end of the Agreement.

9.27 NO PERSONAL LIABILITY

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

9.28 EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.29 FEDERAL CONTRACT REQUIREMENTS.

The Consultant and its subconsultants must follow the provisions, as applicable, as set forth in 2 C.F.R. §200.326 Contract Provisions and Appendix II to 2 C.F. R., Part 200, as amended, including but not limited to:

9.29.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b).

9.29.2 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 comply 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 COUNTY 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 COUNTY must report all suspected or reported violations to the Federal awarding agency. The contractors must also comply 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”). As required by the Act, each contractor or subrecipient is 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 COUNTY must report all suspected or reported violations to the Federal awarding agency.

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

clauses.

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

9.29.3 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the COUNTY in excess of \$100,000 that involve the employment of mechanics or laborers must comply 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 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.

9.29.4 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.

9.29.5 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 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).

9.29.6 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 exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

9.29.8 Procurement of recovered materials as set forth in 2 CFR § 200.322. CONTRACTOR must comply with section 6002 of the Solid Waste disposal Act, as amended, by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Other Federal Requirements:

9.29.9 Americans with Disabilities Act of 1990 (ADA) – The CONSULTANT will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and the assurance by the CONSULTANT pursuant thereto.

9.29.9 Disadvantaged Business Enterprise (DBE) Policy and Obligation - It is the policy of the COUNTY that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its CONSULTANT agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The COUNTY and the CONSULTANT and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

2 C.F.R. § 200.321 CONTRACTING WITH SMALL AND MINORITY
BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS
AREA FIRMS

a. If the CONTRACTOR, with the funds authorized by this Agreement, seeks to subcontract goods or services, then, in accordance with 2 C.F.R. §200.321, the

CONTRACTOR shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible.

b. Affirmative steps must include:

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

9.30 The Consultant shall utilize the U.S. Department of Homeland Security's **E-Verify system** to verify the employment eligibility of all new employees hired by the Consultant during the term of the Contract and shall expressly require any subconsultants performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant during the Contract term.

9.31 NRCS Regulations. NRCS administers the EWP program through the following authorities:

- Section 216, Public Law 81-516 (33 U.S.C. Section 701b);
- Section 403 of Title IV of the Agricultural Credit Act of 1978, Public Law 95-334; and
- Section 382, Title III, of the 1996 Farm Bill Public Law 104-127.
- Codified rules for administration of the EWP program are set forth in 7 CFR 624.

9.32 The CONTRACTOR is bound by the terms and conditions of the Federally-Funded Subaward and Grant Agreement between COUNTY and the Florida Division of Emergency Management (Division) and attached hereto as Exhibit [redacted].

9.33 The CONTRACTOR shall hold the Division and COUNTY harmless against all claims of whatever nature arising out of the CONTRACTOR's performance of work under this Agreement, to the extent allowed and required by law.

Commented [E7]: If you have a FDEM Agreement, then include paragraphs 9.32 and 9.33 as well. On our agreements now, rather than attaching the FDEM Agreement itself, we provide the following for paragraph and attach the Agreement as a hyperlink: The Contractor is bound by the terms and conditions of the Federally-Funded Subaward and Grant Agreement between County and the Florida Division of Emergency Management (Division), Contract No. Z0002, found at the following link on the Monroe County web page: <http://fl-monroecounty.civicplus.com/Bids.aspx?CatID=18>

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)
Attest: KEVIN MADOK, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Mayor

Date: _____

(Seal)
Attest:

CONSULTANT: _____

BY: _____

By: _____

Title: _____

Title: _____

STATE OF _____

COUNTY OF _____

On this ____ day of _____ 201__, before me the person whose name is subscribed above, and who produced _____ as identification, acknowledged that he/she is the person who executed the above Contract for the purposes therein contained.

Notary Public

Print Name

My commission expires: _____ Seal

EXHIBIT A –

SCOPE OF SERVICES

TO BE ATTACHED UPON COMPLETION OF NEGOTIATIONS

EXHIBIT B

CONSULTANTS RATES

TO BE ATTACHED UPON COMPLETION OF NEGOTIATIONS

END OF AGREEMENT

SECTION FOUR: RESPONSE FORMS

RESPONSE FORM

RESPOND TO: MONROE COUNTY BOARD OF COUNTY COMMISSIONERS
c/o PURCHASING DEPARTMENT
GATO BUILDING, ROOM 1-213
1100 SIMONTON STREET
KEY WEST, FLORIDA 33040

I acknowledge receipt of Addenda No.(s) _____

I have included:

- The Submission Response Form _____
- Lobbying and Conflict of Interest Clause _____
- Non-Collusion Affidavit _____
- Drug Free Workplace Form _____
- Public Entity Statement _____
- Respondent's Insurance and Indemnification Statement _____
- Insurance Agent's Statement _____

Commented [E8]: If you include the "scrutinized companies" paragraph in the Termination section, then you will need to add the applicable "scrutinized" form to this list too.

In addition, I have included a current copy of the following professional and occupational licenses:

(Check mark items above, as a reminder that they are included.)

Mailing Address: _____ Telephone: _____

_____ Fax: _____

_____ Date: _____

Signed: _____

Witness: _____

(Seal)

(Name)

(Title)

LOBBYING AND CONFLICT OF INTEREST CLAUSE

**SWORN STATEMENT UNDER ORDINANCE NO. 010-1990
MONROE COUNTY, FLORIDA**

ETHICS CLAUSE

" _____ "
(Company)

"... warrants that he/it has not employed, retained or otherwise had act on his/its behalf any former County officer or employee in violation of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee".

(Signature)

Date: _____

STATE OF: _____

COUNTY OF: _____

Subscribed and sworn to (or affirmed) before me on _____

(date) by _____ (name of affiant). He/She is personally

known to me or has produced _____ as

identification. (type of identification)

NOTARY PUBLIC

My commission expires: _____

NON-COLLUSION AFFIDAVIT

I, _____ of the city of _____
according to law on my oath, and under penalty of perjury, depose and say that:

1. I am _____
of the firm of _____
the bidder making the Proposal for the project described in the Request for
Qualifications for:
_____ and that I executed the said proposal with full authority to do so:

- 2. the prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- 3. unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and
- 4. no attempt has been made or will be made b the bidder to induce any other person, partnership or corporation to submit, or not to submit, a bid for the purpose of restricting competition;
- 5. the statements contained in this affidavit are true and correct, and made with full knowledge that Monroe County relies upon the truth of the statements contained in this affidavit in awarding contracts for said project.

(Signature of Respondent)

(Date)

STATE OF: _____

COUNTY OF: _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____
who, after first being sworn by me, (name of individual signing) affixed his/her signature in the
space provided above on this _____ day of _____ 20____.

NOTARY PUBLIC

My Commission Expires:

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that:

(Name of Business)

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

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

Respondent's Signature

Date

NOTARY PUBLIC

My Commission Expires: _____

PUBLIC ENTITY CRIME STATEMENT

“A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a CONTRACTOR, supplier, subcontractor, or CONTRACTOR 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 from the date of being placed on the convicted vendor list.”

I have read the above and state that neither _____ (Respondent’s name) nor any Affiliate has been placed on the convicted vendor list within the last 36 months.

(Signature)

Date: _____

STATE OF: _____

COUNTY OF: _____

Subscribed and sworn to (or affirmed) before me on _____
(date) by _____ (name of affiant). He/She is personally
known to me or has produced _____ (type of identification) as
identification.

NOTARY PUBLIC

My Commission Expires: _____

Respondent's Insurance and Indemnification Statement

<u>Insurance Requirement</u>	<u>Required Limits</u>
Worker's Compensation	Statutory Limits
Employer's Liability	\$1000,000/\$1,000,000/\$1,000,000
General Liability	\$1,000,000 Combined Single Limit
Vehicle Liability	\$1,000,000 Combined Single Limit per Occurrence/\$1,000,000 Aggregate
Professional Liability \$2,000,000 aggregate	\$1,000,000 per occurrence
Watercraft Liability	\$1,000,000

Monroe County shall be named as an **Additional Insured** on the General Liability, Vehicle Liability, and Watercraft Liability policies.

Jones Act Coverage

Recognizing that the work governed by this contract involves Maritime Operations, the Contractor's Workers' Compensation Insurance Policy shall include coverage for claims subject to the Federal Jones Act (46 U.S.C.A. subsection 688) with limits not less than \$1 Million.

The Contractor shall be permitted to provide Jones Act Coverage through a separate Protection and Indemnity Policy, in so far as the coverage provided is no less restrictive than would have been provided by a Workers' Compensation policy

Indemnification And Hold Harmless For Consultants And Subconsultants

The CONSULTANT covenants and agrees to indemnify and hold harmless COUNTY/Monroe County and Monroe County Board of County Commissioners, its officers and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT, subcontractor(s) and other persons employed or utilized by the CONSULTANT in the performance of the contract.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT's failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the County from any and all increased expenses resulting from such delay. Should any claims be asserted against the COUNTY by virtue of any deficiency or ambiguity in the plans and specifications provided by the CONSULTANT, the CONSULTANT agrees and warrants that CONSULTANT shall hold

the County harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the County's behalf.

The first ten dollars (\$10.00) of remuneration paid to the CONSULTANT is consideration for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

This indemnification shall survive the expiration or earlier termination of the Agreement.

RESPONDENT'S STATEMENT

I understand the insurance that will be mandatory if awarded the contract and will comply in full with all the requirements.

Respondent

Signature

INSURANCE AGENT'S STATEMENT

I have reviewed the above requirements with the bidder named below. The following deductibles apply to the corresponding policy.

POLICY	DEDUCTIBLES
_____	_____
_____	_____
_____	_____
_____	_____

Liability policies are ____ Occurrence ____ Claims Made

Insurance Agency

Signature

Print Name: _____