

# REQUEST FOR PROPOSALS

RFP #004-21

City of Key West

WRECKER/TOWING SERVICES

## LEGAL NOTICE

Pursuant to approval by the City Clerk, Sealed Proposals to provide Wrecker/Towing Services will be received until 3:00 p.m., on May 5, 2021 by the City Clerk's Office, 1300 White Street, Key West, Florida 33040.

### **RFP# 004-21 "Wrecker/Towing Services"**

Services to be provided shall include, but not be limited to the following:

Wrecker/Towing Services in accordance with the terms, conditions, and specifications stated herein.

A  non-mandatory mandatory  pre-proposal conference will be held on April 13, 2021, commencing promptly at 2p.m., and will be held at 1604 N. Roosevelt Blvd., Key West, Florida 33040.

If this pre-proposal conference is denoted as "mandatory", prospective proposers must be present in order to submit a proposal response.

City of Key West does not discriminate based on age, race, color, sex, religion, national origin, disability or marital status.

This Public Notice has been posted on the City of Key West website: [www.cityofkeywest-fl.gov](http://www.cityofkeywest-fl.gov), [www.demandstar.com](http://www.demandstar.com).

**Request for Proposals**  
**RFP#004-21**  
**"Wrecker/Towing Services"**

**1) Introduction/Overview**

**A) Purpose/Objective**

The City of Key West (herein after, "City") has issued this Request for Proposals (hereinafter, "RFP") with the sole purpose and intent of obtaining Proposals from interested and qualified firms offering to provide Wrecker/Towing Services in accordance with the specifications stated and/or attached herein/hereto. The successful proposer will hereinafter be referred to as the "Towing Company" or "Contractor."

The City is seeking the services of qualified individuals or firms interested in providing Wrecker/towing Services for the City. It is anticipated that one Towing Company will be selected for a contract period of four (4) years, with the possibility of two (2), two- year extensions. During this period, the City shall reserve the right to seek proposals from other Towing Companies for specialized projects, as deemed to be in the best interest of the City.

**B) Inquiries**

Direct questions related to this RFP in writing to Chief Sean T. Brandenburg, Key West Police Department, and submit such questions in writing to [sbrandenburg@cityofkeywest-fl.gov](mailto:sbrandenburg@cityofkeywest-fl.gov). Please include the page and paragraph number for each question in order to ensure that questions asked are responded to correctly.

Proposers must clearly understand that the only official answer or position of the City will be the one stated in writing from [sbrandenburg@cityofkeywest-fl.gov](mailto:sbrandenburg@cityofkeywest-fl.gov). All questions asked, along with the answers rendered electronically will be distributed to firms registered for this solicitation and additionally posted on this site.

**C) Method of Source Selection**

The City is using the Request for Proposals methodology of source selection for this procurement, as authorized by Section 2-769 of Code of Ordinances.

The City may, as it deems necessary, conduct discussions with responsible proposers determined to be in contention for being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to solicitation requirements.

#### **D) Pre-Proposal Conference**

A  non-mandatory  mandatory pre-proposal conference will be held on April 13, 2021, commencing promptly at 2p.m., and will be held at 1604 N. Roosevelt Blvd., Key West, Florida 33040.

The purpose of the pre-proposal conference is to allow an open forum for discussion and questioning with City staff regarding the RFP with all prospective proposers having an equal opportunity to hear and participate. Oral questions will receive oral responses, neither of which will be official, nor become part of the RFP. Only written responses to written questions will be considered official and will be included as part of the RFP as an addendum.

All prospective proposers are strongly encouraged to attend, as, unless requested by the department, this will be the only pre-proposal conference for this solicitation. If this pre-proposal conference is denoted as "mandatory", prospective proposers must be present in order to submit a proposal response.

#### **E) Projected Timetable**

The following projected timetable should be used as a working guide for planning purposes only. The City reserves the right to adjust this timetable as required during the course of the RFP process.

Event	Date
Issue RFP Notice	April 5, 2021
Pre-Proposal Conference	April 13, 2021
Last Date for Receipt of Written Questions	April 21, 2021
Proposal Close Date/ Opening City Clerk	May 5, 2021
Evaluation Committee Meeting	May 10, 2021
Commission Meeting	May 19, 2021

#### **Scope of Work**

**The City invites proposals from a qualified Towing Company to provide the following services:**

- When authorized by a representative of the City, the Towing Company shall, at a rate not greater than the applicable maximum rate specified herein, provide for the towing and storage of any motor vehicle, vessel, floating home or structure, trailer, motorcycle, or motor scooter which is towed under provisions of the Code of Ordinances of the City of Key West covering the removal and/or impounding of illegally parked or disabled vehicles, applicable State Statutes, or which is otherwise impounded or required to be moved by or at the direction of a police officer/parking enforcement specialist, from the point of origin to the place of business of the Towing Company, and at a rate no greater than the applicable

maximum rate specified herein, provide for the towing and storage of any vehicle, vessel, floating home or structure, motorcycle, motor scooter or trailer from the scene of an accident to a location within the City, as designated by the owner, other than the place of business of the Towing Company.

- When authorized by a representative of the City, the Towing Company shall, at no charge for City vehicles, owned or leased, vehicles/vessels seized under Chapter 932, F.S., or other vehicles or vessels owned or leased by the City, provide for the towing and/or servicing of any disabled vehicle or vessel. Any disabled vehicle or vessel which must be towed shall be removed from its point of disability to any point within or outside the City, as may be directed by the City, for a distance of up to fifty-five (55) miles without charge to the City.
- Upon payment of all authorized charges, any Towing Company storing a low speed vehicle (i.e. moped/scooter/electric car) north of Stock Island shall return the vehicle to the owner/authorized representative to the city of Key West without charge.
- The Towing Company shall store seized vehicles, vessels, floating homes or structures, at their storage facility. The vehicles/vessels/floating home or structure must be maintained in the condition they were received.
- The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company, or the agent, servant, or employees of the Towing Company.
- The Towing Company guarantees that wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that personnel will be subject to call at any and all times. The Towing Company further guarantees that it will be at the requested location within the City limits within thirty (30) minutes from the time the Towing Company receives a call requesting that a wrecker be dispatched. If said response time exceeds 30 minutes, liquidated damages may be assessed as follows:
  - a . First and Second Offense: A certified letter of warning
  - b . Third Offense: \$50.00
  - c . Fourth Offense: \$250.00
  - d . Any further Offense: \$500.00, suspension, or termination, at the City's option
- The Towing Company shall answer expeditiously all calls from the Key West Police Department, or other City representative, for on-scene service at accidents and shall immediately remove all obstructions caused by accidents.

- Upon request, the Towing Company shall provide the Key West Police Department with reasonable assistance in the examination of vehicles, trailers, vessels, or floating homes or structures stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles, trailers, vessels, or floating homes or structures to be examined by the police.
- All services rendered by the Towing Company under this section shall be at no expense to the City, unless specifically provided otherwise. This shall not prevent the wrecker from charging the owner of the vehicle for such services according to the rates provided in "Rate Charged Owners".

## **Terms and Conditions of Contract**

The City has developed standard contracts/agreements. The selected Towing Company(s) shall be required to sign a standard City contract approved by the City Attorney within twenty-one (21) days of Notice of Selection for Award.

A contract(s) resulting from this RFP shall be subject to the terms and conditions set forth in a standard City Contract as approved by the City Attorney. The City reserves the right to include in any contract document such terms and conditions, as it deems necessary for the proper protection of the rights of the City. The City will not be obligated to sign any contracts, maintenance and/or service agreements or other documents provided by the Towing Company.

The initial term of this Agreement shall be for a four (4) year period beginning on the date the contract is executed by the parties.

EXTENSION - The City, with the agreement of the Towing Company, shall have the option of renewing this Agreement for two (2) two-year terms. Any adjustments in the maximum wrecker fees allowed and the payment to the City shall also be established at the time of renewal.

It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call during the term of this Agreement, with one of its own wreckers or necessary equipment to clear an accident scene or similar situation, it is still responsible for providing a wrecker and related equipment as may be required. It shall obtain at its own expense necessary equipment, such as a crane, from any source able to provide it in a timely manner. The Towing Company may utilize a wrecker from any other wrecker company licensed in the City; in such cases, the substitute wrecker must comply with the terms agreed upon herein.

## **Contractor's Requirement During State of Emergency or Disaster**

Contractor recognizes that the Mayor or designee may declare a state of emergency or state of disaster during the term of this contract. Upon such declaration, the City Manager or designee will notify the contractor that the state of emergency or state of disaster exists, and the required equipment and personnel is ordered on standby. Contractor shall promptly supply the needed equipment and personnel.

## **Payment to the City**

In consideration of the Towing Company being called by the City for the term as provided in "Terms and Conditions" below, the Towing Company shall pay to the City, so long as this Agreement is in effect, a fee for each tow (excluding City owned or leased vehicles/vessels) described in the "Scope of Work" in this Agreement. The Towing Company shall specify the fee it is offering to pay the City per tow in response to this request for proposals.

The Towing Company shall remit to the City an itemized list of work completed for the prior month along with the appropriate total fee no later than fifteenth of the following month (i.e. September's payment will be due by October 15). Failure of the Towing Company to remit the appropriate fee amount within the time allotted shall be grounds, at the discretion of the City, to terminate this Agreement.

## **Rate Charged Owners**

In consideration for the services to be provided by the Towing Company under the terms of this Agreement, the Towing Company may charge the owner of the vehicle being towed or stored the rates listed in Exhibit B, provided that:

- The City shall not be liable in the event of nonpayment by the owner of the vehicle being towed.
- An increase in the maximum rates specified herein may be negotiated at the end of the initial term of this Agreement, along with a corresponding increase in payment to the City.
- The towing /servicing of City owned /leased vehicles shall be as outlined previously in the Scope of Work.
- The maximum rates to be charged the owner for towing and storage of any motor vehicle or trailer towed at the direction of the City are listed in Exhibit "B" of this Agreement.
- Towing Company agrees to tow abandoned or junked vehicles, vessel, floating home or structure, trailer, motorcycle, or motor scooter, at no charge to the City, and the City shall surrender all salvage rights to vehicle to Towing Company and shall retain no liens upon the vehicle.
- No other charges or fees, other than those specified and authorized in this schedule, are allowed for services provided under this Agreement.

## **Rate Charged City**

The City shall not be charged for any services rendered to it under this Agreement except as specifically provided in this Agreement.

## **Prohibited Charges**

The services called for in Scope of Work in this Agreement entitled shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicles was towed in error at the request of the City, nor shall the City in such a case, be responsible for payment of a tow charge or storage costs. The City will not receive the agreed rater per tow.

## **Salvage Rights**

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement, excluding those vehicles seized and held for possible forfeiture by the City. The City will not be charged towing charges or storage fees for temporary storage in cases of vehicles seized for forfeiture.

**Storage Facilities:** Be located south of the eleven (11) mile marker. Must be owned or leased solely by the wrecker operator and vehicles stored by the operator must be separately fenced and locked.

### **Inside Storage:**

1. Roof, wall, solid floor, i.e., concrete or asphalt, free of standing water and vegetation; lockable door; alarm system approved by the Police Department. The area shall be accessible to authorized personnel only.
2. Working area of per vehicle with at least 8' ceiling.
3. Have, within thirty (30) days of award, the ability of lifting vehicles totally off the floor or equivalent facilities to permit Police investigators to inspect below the vehicle to make thorough investigations.
4. Electrical lighting source sufficient to permit processing of vehicle.
5. May not be located on the physical plant (grounds) of another business; i.e., inside storage must be located and maintained inside the physical plant of the Towing Company's business.
6. Contain a minimum of three (3) inside storage spaces for the exclusive use of the Police Department.
7. Must be within a weather tight building. A container shall not be considered a weather tight building.
8. Service or repair bays do not qualify as inside storage, nor does any area that is utilized for any activity other than serving as a permanent

inside storage area, when vehicles are actually stored inside at the request of a law enforcement agency--+.

### **Outside Storage:**

1. To be kept and maintained to include: the removal of junk tires and auto parts, the trimming of all shrubbery, trees and lawns (fence line and grounds), adequate drainage to prevent standing water after rainstorms.
2. Must contain a minimum of twenty-five (25) spaces and housed so that a person may reasonably walk around each vehicle or trailer in an unobstructed manner.
3. Must be protected with an alarm system and must be enclosed with a solid wall or a substantial wire fence not less than six (6) feet in height.
4. Towing Company must provide outside storage, at outside storage rates, unless they receive written instructions from the City or vehicle owner to provide inside storage for that vehicle.
5. Storage shall be fully illuminated with lighting of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet during nighttime. Barriers shall be affixed to the top of the fence or wall to discourage access over the top. The fence or wall shall be kept in good repair throughout the contract term. Damage to the fence or wall shall be repaired within twenty-four (24) hours.
6. May not be located on the physical plant (grounds) of another business; i.e., outside storage must be located and maintained inside the physical plant of the Towing Company's business.

### **Crime Scene Storage:**

1. A storage facility for vehicles, which have been marked "hold" by the Key West Police Department relative to a crime scene investigation, shall be stored indoors.
2. Any vehicle towed, stored, and marked "hold", relative to a crime scene investigation shall be handled with gloves, i.e. cloth, rubber or leather, by the wrecker operator, unless otherwise authorized by police personnel.
3. Crime scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating by coverage of the vehicles with tarpaulin type covers, or their equivalent or by storage in a covered facility.

4. If a vehicle must be processed at the Key West Police Department or other facility, the crime scene vehicle shall be transported at no charge to the city as long as it is south of the 40-mile marker.

All Towing Company storage facilities shall be subject to inspection and must be approved by the City prior to the award of a contract. Storage facilities shall also be subjected to periodic inspection when deemed necessary by the Police Department or other authorized City personnel during the life of this contract. Any discrepancies in the sole opinion of the City shall be submitted in writing to the Towing Company and ten (10) days shall be allowed by the Towing Company to correct the discrepancies to the satisfaction of the City. Upon failure of the Towing Company to remedy the deficiencies in contractual compliance, action may be taken by the City pursuant to "Breach of Agreement" herein.

In the event all storage facilities of the Towing Company are filled to capacity, the Towing Company shall not be relieved of responsibility to perform and is required to make such arrangements for storage as will fulfill the requirements of the City. All storage space used, which is not listed in the original proposal, must meet the requirements of the Agreement. No storage space or area shall be used or changed unless prior written approval is obtained from the Police Department.

Towing Company shall have access to a certified scale to weigh vehicles at the Police Department's request. Towing Company shall have a minimum of twelve (12) vehicle skates to allow for the movement and positioning of vehicles for investigative purposes.

The Towing Company shall have an employee on duty or available at said storage facility, upon 45 minutes' notice, twenty-four (24) hours a day, seven days a week, including holidays.

Vehicles, trailers, vessels, floating homes and structures or other item which have been marked "HOLD" for criminal investigation or forfeiture purposes by the Police Department shall be held at the storage facility, unless indicated otherwise, for whatever period of time necessary to properly process the vehicle and finish the investigation, at no charge to the City. Personnel of the Police Department shall be permitted access to such vehicles at any time. Vehicles stored in enclosed areas shall be secured from access by unauthorized persons. The Towing Company shall take reasonable steps to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD," storage fees may begin to accrue against the owner of the vehicle.

Unless a hold has been placed upon the vehicle, disposal of vehicles will be in accordance with current Florida State Statutes.

**Office Facilities:** Be located south of the eleven (11) mile marker.

1. Towing Company shall provide a desk and chair for Police use for inspection of records and vehicles. The restroom(s) and wash-up facilities shall be kept in a clean, sanitary condition.
2. Physical plant to have business name, address and phone number clearly painted or a sign visible to the public from the street.  
(minimum 4-inch lettering)

3. To be separate from any other business or enterprise.
4. The facility must be accessible 24 hours per day, 7 days per week.
5. Towing Company shall have an employee on duty at the storage facilities in the office, during regular business hours 8am-5pm, for immediate response to calls for service or for release of vehicles. The office is not to close during regular business hours. Phone answering services are not permitted.
6. An employee shall be on call after regular business hours, seven (7) days a week.
7. Conspicuously display maximum charges that may be imposed for ordinary towing.

### **Wrecker Equipment and Towing Company Personnel**

The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services called for by this Agreement. The wreckers must include: two (2) Class "A" wreckers one of which must be a roll back, one (1) Class "B" wrecker, one (1) Class "C" wrecker. In the event a larger capacity wrecker or extra equipment is needed for a City directed tow or similar situation, the Towing Company shall make such arrangements under "Terms and Conditions" hereof. Additional required equipment will include one (1) heavy-duty skid steer loader with bucket, broom, and fork attachments, one (1) tilt bed lo-boy semi-trailer, one (1) tandem axle tractor, one (1) rubber tired front end loader, a source of bulk sand, and a vacuum or suction service.

No owner, partner, employee, or agent of the Towing Company shall have been:

- Convicted of any felony where the person's civil rights have not been restored;
- Convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of length of time or whether civil rights have been restored. For the purpose of this rule, any offense involving perjury, false statement, or dishonesty shall also be considered to be directly related to the business of operating a wrecker.
- For the purposes of this section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a jury verdict of guilty even when adjudication is withheld, and the accused is placed on probation.

The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance, chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last five (5) years.

The Towing Company shall comply with all the requirements for a drug free workplace certification.

## **Radio Communications**

The Towing Company shall provide a two-way radio or approved alternate communication system to its drivers to ensure communications between its office and all tow trucks operated by the Towing Company. The communication system shall be regularly checked and remain fully operational during the term of the agreement.

## **Non-Exclusiveness**

The Towing Company agrees that the owner or person in possession of any vehicle which has been incapacitated shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

## **Benefits from Repairs**

The Towing Company shall not benefit directly or indirectly, without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor vehicle repair or painting with respect to vehicles towed and/or stored by the Towing Company under the terms and provisions of any agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner or between the Towing Company and a repair facility shall state the repairs/painting to be done as well as the price and terms of payment, therefore.

## **Liability of Towing Company**

The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall prepare a written inventory of all personal property contained in the vehicle to be towed, or endorse the inventory prepared by the police officer in charge.

## **Personal Property in Vehicles**

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall not be disposed of to defray any charge for storage or towing of the vehicle, except as provided by law. All such personal property must be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession thereof upon proper proof of ownership or right to possession as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the owner or person entitled to possession thereof shall receipt the Towing Company for the same.

## **Release of the Vehicle**

The Towing Company agrees to release any vehicle which has not been marked "HOLD" to the proper owner or person entitled to possession of the vehicle. Any vehicle which has been marked "HOLD" by the Key West Police Department cannot be released without prior authority from the Police Department. The Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall be given a receipt for the vehicle. The Towing Company shall deliver to the Police Department on a regular basis as decided by the Police Department a report of all vehicles released.

## **FEMA**

The terms and conditions contained in attached Exhibit "C", FEMA requirements, are incorporated herein for those inspections required for city projects generated by damages resulting from storms or other calamities resulting in a declaration of emergency by the governor of the State of Florida.

## **Posting Charges**

The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed the amounts listed in Attached "B" herein.

## **Itemized Statements**

Should any owner or person entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner or such person offering title to possession with an itemized statement of all charges relating to the towing and storage of such vehicle.

## **Records, Books and Payment**

The City reserves the right, during normal business hours, to inspect and audit the Towing Company records pertaining to service provided under this Agreement. All records must be maintained at one central location as provided hereinafter. Copies of all Towing Company paid invoices for services provided each month as a result of this Agreement shall be submitted with the monthly payment, if requested by the City.

The Towing Company shall maintain for the period required by Chapter 119, F.S., following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:

- Where the vehicle was towed from; the date towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date the vehicle was released or disposed of; and all correspondence sent or received concerning said vehicle.
- The Towing Company shall be required to submit a list of all vehicles towed under authority of the Police Department on a regular basis as approved by the Police Dept., describing each vehicle by Make, Year, Model, VIN and Tag Number.
- The records shall be submitted utilizing the following procedures:
  - a . The Towing Company shall computerize its record keeping procedures.
  - b . The program used to store and retrieve records from the company's computer shall be approved by the Police Department.
  - c . The records submitted to the Police Department shall be in a format approved by the Police Department.

The Towing Company shall comply with all the applicable provisions of Chapter 119, F.S.

### **Right to Cancel Service Call**

The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the vehicle operator/owner. When a wrecker is to be canceled, it must be canceled over the police radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the vehicle to be towed and the wrecker has stopped in preparation to perform the towing service.

### **Compliance with Laws and Rules**

The Towing Company agrees to and shall comply with all applicable provisions of the Florida Statutes, including Section 316.530, Section 323.002, all applicable City ordinances, and the Rules of the Key West Police Department.

### **Breach of Agreement**

It shall be the right of the City Manager and any officials of the City which he may designate to observe closely the wrecker service operations and if, in the opinion of the City Manager, there has been a breach of agreement, the City Manager shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of agreement. If within a period of seven (7) days the Towing Company has not eliminated the condition considered to be a breach of agreement, the City Manager may so notify the City Commission and a hearing shall be set for a date within fifteen (15) days of such notice. At that time, the City Commission shall hear the Towing Company and the City representatives, and shall make a determination as to whether or not there has been a breach of agreement, and shall direct what further action shall be taken by the City, including but not limited to termination of this Agreement, as hereinafter provided. Any lesser remedial action than termination shall not waive the City's right to further remedial action or to strict performance of that or any other term of the Agreement.

In addition to terminating this Agreement, the City may recover from the case or surety bond all administrative costs as provided by "Bonding Requirements" of this Agreement.

The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statutes.

### **Misleading, Dishonest or Illegal Practices; Rudeness or Discourtesy**

The Towing Company warrants that it will not engage in any misleading, dishonest or illegal practices, or rudeness or discourtesy with regard to the services performed pursuant to this Agreement. The City shall promptly notify Towing Company of any alleged violation or a complaint under this paragraph. If a satisfactory written explanation is not received by the City Manager within seventy-two (72) hours of receipt of the notice by the Towing Company, the

violation shall be considered sustained. Six (6) or more sustained complaints or violations within any twelve (12) month period shall be considered a breach of this agreement requiring action by the City Commission as specified herein.

## **General Terms and Conditions**

### **Licenses**

At the time of the response to this solicitation, the Towing Company is required to possess the correct occupational license, professional license, and any other authorizations necessary to carry out and perform the work required by the project pursuant to all applicable Federal, State and Local Law, Statute, Ordinances, and rules and regulations of any kind.

If required and/or requested, copies of the required licenses must be submitted with the proposal response indicating that the entity proposing, as well as the team assigned to the City account, are properly licensed to perform the activities or work included in the contract documents. A Towing Company, with an office within the City is also required to have a business tax receipt and certificate of use. If you have questions regarding required professional licenses and Business Tax Receipt and Certificate of use, contact the Chief Licensing Official at (305) 809-3971.

### **Principals/Collusion**

By submission of this Proposal, the undersigned, as Proposer, does declare that the only person or persons interested in this Proposal as principal or principals is/are named therein and that no person other than therein mentioned has any interest in this Proposal or in the contract to be entered into; that this Proposal is made without connection with any person, company or parties making a Proposal, and that it is in all respects fair and in good faith without collusion or fraud.

### **Taxes**

The City is exempt from Federal Excise and State of Florida Sales Tax.

### **Relation of City**

It is the intent of the parties hereto that the Towing Company shall be legally considered an independent Towing Company, and that neither the Towing Company nor their employees shall, under any circumstances, be considered employees or agents of the City, and that the City shall be at no time legally responsible for any negligence on the part of said Towing Company, their employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

### **Termination**

Should the Towing Company be found to have failed to perform their services in a manner satisfactory to the City, the City Commission may terminate this Agreement immediately for cause; further the City Commission may terminate this Agreement for convenience with a thirty (30) day

written notice to the Towing Company. The City Commission shall be sole judge of non-performance.

## **Liability**

The Towing Company will not be held responsible for failure to complete contract due to causes beyond its control, including, but not limited to, work stoppage, fires, civil disobedience, riots, rebellions, Acts of Nature and similar occurrences making performance impossible or illegal.

## **Assignment**

The Towing Company(s) shall not assign, transfer, convey, sublet or otherwise dispose of this contract, or of any or all of its rights, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the City. Such consent may be withheld for any reason in the sole discretion of the City Commission.

## **Cone of Silence**

All firms must comply with and sign attached attachment in regard to the City of Key West Ordinance Section 2-773 Cone of Silence. Failure to abide by this provision may serve as grounds for ineligibility for award of this contract to the proposer.

## **Equal Opportunity**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages participation by minority and women business enterprises.

## **Domestic Partnership Benefits**

All firms must comply with and sign attached document in regard to the City of Key West Ordinance 2-799 equal benefits for domestic partners.

## **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 Proposals or contract with the City for construction of a public building or public works; may not submit bids for leases of real property to a public entity; may not be awarded or perform work as a Towing Company, supplier, Sub Towing Company, 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 for in s. 287.017 for CATEGORY TWO for a period of 36 months from the date being placed on the convicted vendor list.

## **Conflict of Interest**

Proposer shall complete the Conflict of Interest Affidavit included as an attachment to this RFP document. Disclosure of any potential or actual conflict of interest is subject to City staff review and does not in and of itself disqualify a firm from consideration.

These disclosures are intended to identify and or preclude conflict of interest situations during contract selection and execution.

## **Prohibition of Gifts to City Employees**

No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any City employee, as set forth in Chapter 112, Part III, Florida Statutes, the current City Ethics Ordinance, and City Administrative Policy. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with City staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the City for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.

## **Immigration Reform and Control Act**

Proposer acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the awarded firm(s) to comply with the laws referenced herein shall constitute a breach of the award agreement and the City shall have the discretion to unilaterally terminate said agreement immediately.

## **Instructions for Statement of Proposals**

### **A) Compliance with the RFP**

Proposals must be in strict compliance with this RFP. Failure to comply with all provisions of the RFP may result in disapproval.

### **B) Acknowledgment of Insurance Requirements**

By signing the Insurance Requirements included in this RFP, Proposer acknowledges these conditions include Insurance Requirements.

It should be noted by the Proposer that, in order to meet the City's requirements, there may be additional insurance costs to the Proposer's firm. It is, therefore, imperative that the proposer discuss these requirements with the Proposer's insurance agent, as noted on the Insurance Check List, so that allowances for any additional costs can be made by the Proposer.

The Proposer's obligation under this provision shall not be limited in any way by the agreed upon contract price, or the Proposer's limit of, or lack of, sufficient insurance protection.

Proposer also understands that the evidence of required insurance may be required within five (5) business days following notification of its offer being accepted; otherwise, the City may rescind its acceptance of the Proposer's proposal.

The specific insurance requirements for this solicitation are included as part of this solicitation.

### **C) Acknowledgment of Bonding Requirements**

By signing its proposal, and if applicable, Proposer acknowledges that it has read and understands the bonding requirements for this proposal. Requirements for this solicitation are checked.

**Cash Bond:** Prior to the effective commencement date of this Agreement, the Towing Company shall post a cash or surety performance bond in the amount of five thousand dollars (\$5,000) with the City to be used by the City in the event:

The Towing Company fails to provide wrecker service required by this Agreement, for the purpose of defraying costs incurred by the City in making adequate arrangements for the removal of vehicles.

The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in "Breach of Agreement", for the purpose of defraying any costs of the City due to the default.

### **D) Delivery of Proposals**

All Proposals are to be delivered before 3:00 p.m., local time, on or before May 5, 2021 to:

City of Key West  
City Clerk  
1300 White Street  
Key West, Florida 33040

The City shall not bear the responsibility for Proposals delivered to the City Clerk past the stated date and/or time indicated, or to an incorrect address by proposer's personnel or by the proposer's outside carrier. However, the City Clerk, or designee, shall reserve the right to accept Proposals received after the posted close time only under the following condition:

The tardy submission of the proposal is due to the following circumstances, which shall include but not be limited to late delivery by commercial carrier such as Fed Ex, UPS, DHL, or courier where delivery was scheduled before the deadline.

The Proposer is required to submit one (1) original and one (1) copy of the proposal. In addition, one (1) electronic copy of all submitted documents shall be submitted on a properly labeled CD.

The use of Adobe (PDF) is highly recommended but not mandatory. All electronic copies shall be compatible with Microsoft Office and Microsoft Windows applications.

List the Proposal Number on the outside of the box or envelope and note "Request for Proposal enclosed."

## **E) Evaluation of Proposals (Procedure)**

### **1. Proposal Evaluation**

Proposals submitted will be initially evaluated by a three-member Evaluation Committee.

### **2. Review of Proposals**

In a publicly noticed meeting the Evaluation Committee will meet to review and discuss the proposals. The Evaluation Committee will then evaluate and rank the responses based on the items described in the Evaluation Criteria. The Committee may short list firms to be submitted to the City Commission should the number of respondents exceed three. The City Commission may accept the ranking recommendation of the Evaluation Committee, request ranked firms to give presentations and/or answer questions, amend the rankings or reject all proposals. The City Commission will make the final selection.

### **3. Evaluation Criteria**

Proposals will be evaluated using four sets of criteria: Towing Service Capabilities, Technical Qualifications, Storage Facility and Rates for Service Requirements. The following represent the principal selection criteria which will be considered during the evaluation process.

- A. Towing Services Capabilities-(equipment, financial stability, operating procedures etc.)  
**max.30 points**
- B. Storage Facility-(number of spaces, proximity to City, security, etc.) **max. 20 points**
- C. Technical Qualifications-(references, expertise and experience, number of staff, etc.)  
**max.20 points**
- D. Proposed rates for service provided-(proposed dollar amount paid to City per tow.) **max.30 points**

### **4. Oral Presentations**

During the evaluation and selection process, the Evaluation Committee may, at its discretion, request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions on a firm's proposal. Not all firms may be asked to make such oral presentations. Firms may also be requested to give oral presentations in the final selection proceedings. All presentations shall be at the firm's own expense.

## **5. Final Selection**

The City Commission will make the final selection. Only the three (3) highest rated Proposals as determined by the City Manager appointed Evaluation Committee will go forward to the City Commission in ranked order. Each short-listed proposal may be required to make a presentation to the City Commission; the exact length of the presentation is up to the discretion of the Commission and will be determined by them in advance of the scheduled hearing. Final award will be made by the City Commission, based solely on that response which, in their opinion, is in the best interest of the City of Key West, all factors considered, irrespective of the City Manager appointed Evaluation Committee ranking. The final selection likely will be scheduled on the agenda of the City Commission Meeting to be held at 5:00 p.m. May 19, 2021. All firms to be ranked should plan to attend at their own expense and be prepared to give an oral presentation.

Following notification of the firm selected, the negotiation process will begin. It is anticipated a contract will be executed between both parties and approved by the City Commission by within 21 days of the Commission's selection.

### **F) Ambiguity, Conflict, or Other Errors in the RFP**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, Proposer shall immediately notify the Chief of Police, noted herein, of such error in writing and request modification or clarification of the document. The Chief of Police will make modifications by issuing a written revision and will give written notice to all parties who have received this RFP.

The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the RFP prior to submitting the proposal or it shall be waived.

### **G) Proposal, Presentation, and Protest Costs**

The City will not be liable in any way for any costs incurred by any proposer in the preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions, negotiations, or, if applicable, any protest procedures.

### **H) Acceptance or Rejection of Proposals**

The right is reserved by the City to waive any irregularities in any proposal, to reject any or all Proposals, to re-solicit for Proposals, if desired, and upon recommendation and justification by the City to accept the proposal which in the judgment of the City is deemed the most advantageous for the public and the City.

Any proposal which is incomplete, conditional, and obscure or which contains irregularities of any kind may be cause for rejection. In the event of default of the successful proposer, or their refusal to enter into the City contract, the City reserves the right to accept the proposal of any other proposer or to re-advertise using the same or revised documentation, at its sole discretion.

### **I) Requests for Clarification of Proposals**

Requests by the Chief of Police to a proposer(s) for clarification shall be in writing. Proposer's failure to respond to request for clarification may deem proposer to be nonresponsive and may be just caused to reject its proposal.

## **J) Validity of Proposals**

No proposal can be withdrawn after it is filed unless the Proposer makes their request in writing to the City prior to the time set for the closing of Proposals.

All Proposals shall be valid for a period of one hundred eighty (180) days from the submission date to accommodate evaluation and selection process.

## **K) Response Format**

The proposal shall be deemed an offer to provide services to the City. In submitting a proposal, the Proposer declares that he/she understands and agrees to abide by all specifications, provisions, terms and conditions of same, and all ordinances and policies of the City. The Proposer agrees that if the contract is awarded to him/her, he/she will perform the work in accordance with the provisions, terms and conditions of the contract.

To facilitate the fair evaluation and comparison of Proposals, all Proposals must conform to the guidelines set forth in this RFP.

Any portions of the proposal that do not comply with these guidelines must be so noted and explained the Acceptance of Conditions section of the proposal. However, any proposal that contains such variances may be considered non-responsive.

Proposals should be prepared simply and economically, providing a straightforward concise description of the Proposer's approach and ability to meet the City's needs, as stated in the RFP. All copies of the proposal should be bound and tabbed, preferably in a three (3) ring binder for uniformity and ease of handling. The utilization of recycled paper for proposal submission is strongly encouraged.

The items listed below shall be submitted with each proposal and should be submitted in the order shown. Each section should be clearly labeled, with pages numbered and separated by tabs. Failure by a proposer to include all listed items may result in the rejection of its proposal.

### **1) Tab I, Management Summary**

Provide a cover letter, signed by an authorized officer of the firm, indicating the underlying philosophy of the firm in providing the services stated herein. Include the name(s), telephone number(s), and email(s) of the authorized contact person(s) concerning proposal. Submission of a signed Proposal is Proposer's certification that the Proposer will accept any awards made to him as a result of said submission of the terms contained therein.

### **2) Tab II, Equipment and Terms Verification**

A Letter stating that the Towing Company can provide all of the stated equipment (Exhibit A) and will agree the stated rate structure (Exhibit B).

### **3) Tab III, Acceptance of Conditions**

Indicate any exceptions to the general terms and conditions of the RFP, and to insurance requirements or any other requirements listed in the RFP. If no exceptions are indicated in this

tabbed section, it will be understood that no exceptions to these documents will be considered after the award, or if applicable, during negotiations.

#### **4) Tab IV, Required Form Submittals**

- Proposer Checklist
- Conflict of Interest
- Declaration Statement
- Insurance Requirements
- Insurance Requirements
- Cone of Silence
- Equal Benefits for Domestic Partners
- Local Vendor Certification
- Anti-Kickback Affidavit
- Indemnification Form
- Public Entity Crimes Affidavit

#### **L) Proposal Evaluation Committee and Evaluation Factors**

The evaluation team will evaluate and rank each submittal based on required information provided.

Evaluation factors are based on the abilities of the proposer to efficiently perform the Scope of Services as generally outlined in this Request for Proposals. The City will be seeking to identify the submittal(s) which will best meet the needs of the City of Key West as determined from the responses to this Request for Proposals.

The Selection Committee will present its recommendation to the City Commission, which has the authority to make the final determination and award contracts.

ATTACHMENTS  
THIS SHEET MUST BE SIGNED  
CITY OF KEY WEST  
KEY WEST, FLORIDA  
FINANCE DEPARTMENT

Proposer Checklist

**IMPORTANT:** Please read carefully, sign in the spaces indicated and return with your Proposal.

Proposer should check off each of the following items as the necessary action is completed:

- The Proposal has been signed.
- All information as requested in the Proposer's Proposal Form is included.
- All applicable forms have been signed and included
- Any addenda have been signed and included.
- The mailing envelope has been addressed to:

CITY CLERK  
City of Key West  
1300 White Street  
Key west, Florida 33040

- The mailing envelope must be sealed and marked with Proposal Number, Proposal Title and Due Date.
- The Proposal will be mailed or delivered in time to be received no later than the specified due date and time. (Otherwise Proposal cannot be considered.)

ALL COURIER-DELIVERED PROPOSALS MUST HAVE THE RFP NUMBER AND TITLE ON THE OUTSIDE OF THE COURIER PACKET

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

Signature and Title \_\_\_\_\_

Date \_\_\_\_\_

Email \_\_\_\_\_

## Conflict of Interest Affidavit

By the signature below, the firm (employees, officers and/or agents) certifies, and hereby discloses, that, to the best of their knowledge and belief, all relevant facts concerning past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise) which relates to the proposed work; and bear on whether the firm (employees, officers and/or agents) has a possible conflict have been fully disclosed.

Additionally, the firm (employees, officers and/or agents) agrees to immediately notify in writing the Finance Director, or designee, if any actual or potential conflict of interest arises during the contract and/or project duration.

\_\_\_\_\_

Firm

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Name Printed

\_\_\_\_\_

Title of Person Signing Affidavit

State of

City of

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_ by \_\_\_\_\_ who is personally known to me to be the  
\_\_\_\_\_ for the Firm, OR who produced the following identification:

\_\_\_\_\_

Notary Public

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

## **Declaration Statement**

City of Key West  
1300 White Street  
Key West, FL 33040

RE: RFP NO. 01-14-- "Wrecker/Towing Services"

Dear Mayor and Commissions:

The undersigned, as Proposer (herein used in the masculine, singular, irrespective of actual gender and number) declares that he is the only person interested in this proposal or in the contract to which this proposal pertains, and that this proposal is made without connection or arrangement with any other person and this proposal is in every respect fair and made in good faith, without collusion or fraud.

The Proposer further declares that he has complied in every respect with all the Instructions to Proposers issued prior to the opening of Proposals, and that he has satisfied himself fully relative to all matters and conditions with respect to the general condition of the contract to which the proposal pertains.

The Proposer puts forth and agrees to commence negotiations, in accordance with F.S. 287.055(5), and execute an appropriate City document for the purpose of establishing a formal contractual relationship between him, and the City.

(Proposal Continued on Next Page)

**PROPOSAL CONTINUED**

IN WITNESS WHEREOF, WE have hereunto subscribed our names on this \_\_\_\_\_ day of 20\_\_ in the City of \_\_\_\_\_ in the State of \_\_\_\_\_.

\_\_\_\_\_  
Firm's Complete Legal Name

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, ZIP)

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Check one of the following:

Sole Proprietorship

Corporation or P.A. State

Limited Partnership

General Partnership

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

Typed and Written Signature

\_\_\_\_\_  
Title

**ADDITIONAL CONTACT INFORMATION**

Send Payments To:

(REQUIRED ONLY if different from above)

Contact Name: \_\_\_\_\_

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

\_\_\_\_\_

(Company Name used as Payee)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, state, ZIP)

Phone No. \_\_\_\_\_

FAX No. \_\_\_\_\_

Email address: \_\_\_\_\_

## **City of Key West, Florida Insurance Requirements**

CONTRACTOR agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by CONTRACTOR under this contract.

NOTE: A Garage Liability coverage form may satisfy the same requirement to maintain Commercial General Liability and Business Auto Liability insurance as required herein.

**Commercial General Liability** CONTRACTOR agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Business Automobile Liability** CONTRACTOR agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event CONTRACTOR does not own automobiles, CONTRACTOR agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy, or Garage Liability, if applicable.

**Garage keeper's Liability** CONTRACTOR agrees to maintain Garage keeper's Legal Liability at a limit not less than \$300, 000 Combined Single Limit. When a per vehicle sublimit applies, the minimum sublimit shall not be less than \$50,000 per vehicle. An "on-hook" coverage, or similar endorsement, should be included in the event any CITY vehicles are towed, or on behalf of City, by CONTRACTOR. Any per vehicle or per occurrence deductible shall be the contractor's responsibility.

NOTE: A Garage Liability coverage form may satisfy the same requirement to maintain Commercial General Liability and Business Auto Liability insurance.

**Worker's Compensation Insurance & Employers Liability** CONTRACTOR agrees to maintain Worker's Compensation — Statutory and Employer's Liability: \$1,000,000 Each Accident; \$1,000,000 Disease-Policy Limit; 1,000,000 Disease-Each Employee

**Additional Insured** CONTRACTOR agrees to endorse CITY as an Additional Insured with a CG 2026 Additional Insured — Designated Person or Organization endorsement, or similar endorsement, to both the Commercial General Liability and Business Auto Liability, or Garage Liability, if applicable. The Additional Insured shall read "City of Key West."

**Waiver of Subrogation** CONTRACTOR agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit CONTRACTOR to enter into an pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance** CONTRACTOR agrees to provide CITY a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force

and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

City of Key West  
Attn: Purchasing Agent  
1300 White Street  
Key West, FL 33040

**Umbrella or Excess Liability** CONTRACTOR may satisfy the minimum liability limits required above for Commercial General Liability or Business Auto Liability, or Garage Liability, if applicable, under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability, or Garage Liability, if applicable. CONTRACTOR agrees to endorse CITY as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**Right to Revise or Reject** CITY reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the CITY reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due of its poor financial condition or failure to operating legally.

### **Indemnification**

The Contractor shall indemnify and save harmless and defend the City, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of the Contractor, its agents, servants, or employees in the performance of services under this Contract.

The Contractor further agrees to indemnify, save harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action whatsoever kind or nature arising out of any conduct or misconduct of the Contractor not included in the paragraph above and for which the City, its agents, servants or employees are alleged to be liable.

Towing Company further certifies that it will meet all insurance requirements of the City of Key West as prescribed by the City's Risk Manager and agrees to produce valid, timely certificates of coverage. Should the Towing Company fail to provide acceptable evidence of current insurance within ten (10) days of receipt of written notice at any time during the agreement, the City shall have the right to consider the franchise breached and justifying the termination thereof.

Compliance by the Towing Company and all sub Towing Company with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the Towing Company and all sub Towing Company of their liabilities and obligations under this heading or under any other section or provision of this franchise agreement for wrecker service.

Throughout the term of this contract, Successful Proposer(s) and/or any and all sub Towing Company or anyone directly or indirectly employed by either of them shall maintain in force at their own expense, required insurance.

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**PROPOSER'S AND INSURANCE AGENT'S STATEMENT:**

We understand the insurance requirements of these specifications and that the evidence of insurability may be required within five (5) days of the award of RFP.

---

Proposer

---

Insurance Agency

---

Signature of Proposer

---

Signature of Proposer's Agent

**Exhibit A**  
**RULES OF THE KEY WEST POLICE**  
**DEPARTMENT**  
**WRECKER PROPOSALS AND REGULATIONS**

**I. SCOPE AND PURPOSE**

- 1) These rules apply only to the Towing Company under contract to the City of Key West.
- 2) These rules are designed to assist private and commercial users of the highways of this City by insuring that only qualified, reputable wrecker operators and equipment are provided for removal of wrecked, disabled, stolen, or abandoned motor vehicles in the event the owner or operator is qualified under these rules. In such event, the owner's request will be honored without resort to these rules unless there will be an unreasonable time delay and a traffic problem exists.

**II. DEFINITIONS**

- 1) The Department - The Key West Police Department.
- 2) The City - The City of Key West
- 3) Operator - The individual, partnership, corporation, or business entity engaged for hire in the recovery, towing or removal of wrecked, disabled, stolen, or abandoned motor vehicles under contract to the City. For the purpose of this rule, an employee shall be governed by these rules while on duty, and unless otherwise stated, shall be considered an agent for the wrecker operator.
- 4) Agreement - The Wrecker Service Agreement entered into between the City and Operator.

**III. RESPONSE TO CALLS**

- 1) The operator shall respond to all requests made through the Department as specified under Scope of Work.
- 2) Unless authorized by the Department officer, flashing amber lights shall not be used while responding to a call for service.
- 3) Flashing amber lights shall be used at the scene and when towing from the scene in accordance with Chapter 316, F.S.
- 4) When no hold is placed against the vehicle by the investigating officer, the operator shall tow to any location the owner requests.

- 5) Any ancillary service, such as the use of dolly, dropping and hooking up linkage, is to be performed only if required and appropriate.
- 6) The motor vehicle owner is responsible for payment of charges imposed by the operator.

#### **IV. WRECKER CLASSIFICATION AND REQUIRED EQUIPMENT**

If awarded a contract, the Towing Company is to provide the minimum number of wreckers in each classification listed below in accordance with the Rules of the Department of Highway Safety and Motor Vehicles Division of Florida Highway Patrol Wrecker Proposals and Allocation System. Additional wreckers of a higher class may be substituted to meet the requirements for a lower-class vehicle. If additional wreckers in any or all classes are required to handle the volume of tows requested under this contract, the Towing Company is to provide them at no cost to the City. Towing Company agrees to maintain a sufficient fleet of tow trucks and necessary equipment to perform the total contract service requirements, plus all other business including law enforcement and commercial. The City will be given preference on any call for service.

All equipment shall be commercially manufactured and in good mechanical condition. All vehicles should be certified clean idle and must adhere to the best environmental standards practicable. No towing service equipment shall be used by the Towing Company as an emergency vehicle. All towing vehicles must be equipped with a two-way communication capable of covering all assigned territory and to the Towing Company's Compound.

Towing Company shall have full control and total availability of all equipment listed below in his/her contract inventory.

**Class "A" Towing/Recovery Vehicle** (for the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less):

- A. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight. A complete, commercially manufactured boom and at least one winch having a manufacturer's combined rating of at least four tons must be mounted on the chassis. Hand crank winches do not satisfy these requirements and will not be approved.
- B. A minimum of 100 feet of three-eighths-inch cable.
- C. Dollies.
- D. Flood lights on the hoist.
- E. Vehicles which are equipped with wheel lifts or the equivalent may also qualify as class "A" tow trucks so long as they are equipped with a boom and all other applicable requirements are met. Wheel lifts shall be rated at a minimum of 3,000 pounds lift capacity and must utilize wheel safety straps when lifting vehicles by the wheels only.

**Class "A" roll-back or slide-back wreckers** (for the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less): Specifications and equipment for roll-back or slide-back carriers in addition to the requirements outlined above shall include the following:

- A. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight with a minimum of a 16-foot bed, dual rear wheels and a winch with at least 8,000 pounds capacity.
- B. A minimum of 50 feet of three-eighths-inch cable.
- C. A minimum of two safety tie-down chains of at least ten feet each in length.
- D. Two spot (flood) lights mounted on the rear of the carrier.
- E. A roll-back or slide-back carrier trailer shall meet the following requirements:
  - a . A commercially manufactured carrier trailer with a rated capacity of at least 8,000 pounds gross vehicle weight with a minimum 16-foot bed equipped with a winch with at least 8,000 pounds lifting/pulling capacity.
  - b . A minimum of 50 feet of three-eighths-inch cable.
  - c . Brakes and trailer lights which meet the minimum statutory requirements of Florida law.
  - d . Safety chains.
  - e . Must be towed by and used in conjunction with an approved wrecker that meets or exceeds the class of the vehicle to be towed.

**Class "B" Towing/Recovery Vehicle** (for removal of medium duty trucks or vehicles weighing 20,000 pounds gross vehicle weight or less)

- A. Manufacturer's rated capacity of at least 20,000 pounds gross vehicle weight. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least ten-ton capacity mounted on the chassis.
- B. A minimum of 100 feet of at least one-half-inch cable on each drum.
- C. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.
- D. Flood lights on the hoist.

**Class "C" Towing/Recovery Vehicle** (for removal of heavy-duty trucks, house trailers, buses, etc., weighing over 20,000 pounds gross vehicle weight)

- A. A truck chassis with a manufacturer's rated capacity of at least 30,000 pounds gross vehicle weight and 30,000 pounds gross vehicle weight for tandem axle trucks. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least 25ton capacity mounted on the chassis.
- B. A minimum of 200 feet of at least five-eighths-inch cable on each drum.
- C. Air brakes so constructed as to lock the rear wheels automatically upon failure.
- D. External air hookup and hoses, to supply air to disabled vehicles.
- E. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.
- F. Flood lights on the hoist.

## **Heavy Duty Skid Steer**

- A. Must have bucket, broom, and fork attachments.
- B. Used when a vehicle has lost its load.
- C. Also used for removal of significant crash debris.

## **Tandem Axle Tractor and Tilt Bed Lo-Boy Semi-Trailer**

- A. Removal of significantly damaged vehicles that could not be otherwise removed by other means.

## **Rubber Tired Front End Loader**

- A. Minimum 2 yard bucket.

## **Source of Bulk Sand**

- A. For spills and as otherwise needed at scenes.

## **Vacuum or Suction Service**

- A. For removal of sand or other debris as necessary.

## **Equipment Requirements:**

1. Wreckers shall be properly equipped with clearance and marker lights and all other equipment as required by the Florida Statutes.
2. There shall be rotor beam or strobe type light, amber in color, mounted on the wrecker in such a manner that it can be seen from the front, rear and both sides.
3. Dollies for all vehicles except for Class "C" and roll back carriers.
4. At least one heavy duty push broom with a minimum width of 24 inches on each vehicle.
5. Flood light on the hoist.
6. Minimum of one square shovel per each vehicle.
7. One crowbar or pry bar with a minimum length of thirty (30) inches per vehicle.
8. A minimum of one 5-pound CO<sub>2</sub>, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current inspection tag. The extinguisher must be mounted so as to be readily accessible on every vehicle.
9. One pair of bolt cutters with a minimum 1/2-inch opening per
10. One set of jumper cables per vehicle.

11. One four-way lug wrench per vehicle.
12. One flashlight per vehicle.
13. Five thirty (30) minute fuses per vehicle.
14. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
15. External air hookup and hoses for Class "C" trucks.
16. Extra towing chain six to eight feet in length with hooks per vehicle.
17. At least six safety cones or triangle reflectors per vehicle.
18. Fifty pounds of sand or suitable equivalent per vehicle.

### **Wrecker Drivers:**

1. All drivers are required to have a valid Florida CDL license in their possession at all times.
2. Wrecker operators and drivers are required to comply and be familiar with the Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes.
3. Wrecker drivers properly at the scene of an accident shall remove only the vehicle involved at the direction of the Investigating Officer.
4. Wrecker drivers shall sweep glass from the roadway and remove all debris or hazards from the scene as required by the Agreement.
5. The wrecker operator shall be thoroughly familiar with the wrecker he is operating.
6. Wrecker driver shall wear a reflective vest or equivalent high visibility gear.
7. The operator shall be responsible for any damage to a vehicle caused by the driver.

**Exhibit B**  
**TOWING RATE STRUCTURE**

**RATES CHARGED OWNERS:**

In consideration for the services to be provided by the Towing Company under the terms of participating in this agreement, the Towing Company may charge the owner/operator of the vehicle being towed or stored the rates listed below, provided that:

- 1) The City of Key West shall not be liable in the event of non-payment by the owner of the vehicle being towed.
- 2) The Towing Company agrees to tow abandoned or junked vehicles at no charge to the City of Key West, and the City shall surrender all salvage rights to the vehicle to the Towing Company and shall retain no liens upon the vehicle.

The maximum rates to be charged the owner for towing and storage of any motor vehicle or trailer towed at the direction of the City shall be:

For the removal and storage of wrecked or disabled motor vehicles or for the removal and storage of abandoned motor vehicles at the request of a law enforcement officer, the maximum rate that may be charged by a wrecker operator is:

**Class "A" wrecker service - \$135.00.**

- For motorcycles, cars and vehicles weighing 10,000 pounds or less.
  - Inside storage per day (after the first six hours) - \$40.00 plus \$2.00 per foot for vehicles over 20 feet in length.
  - Outside storage per day (after the first six hours) - \$40.00 plus \$1.00 per foot for vehicles over 20 feet in length.
- Hourly charge in prorated quarter hour increments beginning 60 minutes after arrival - \$135.00.
- Administrative fee per notification - \$25.00.

**Class "B" wrecker service - \$200.00.**

- For vehicles weighing 20,000 pounds or less.
- Inside storage per day (after the first six hours) - \$40.00 plus \$2.00 per foot for vehicles over 20 feet in length. ● Outside storage per day (after the first six hours) - \$40.00 plus \$1.00 per foot for vehicles over 20 feet in length.
- Hourly charge in prorated quarter hour increments beginning 60 minutes after arrival - \$180.00.
- Administrative fee per notification - \$25.00.

## **Class "C" wrecker service - \$485.00.**

- For vehicles weighing between 20,000 pounds to 52,000 pounds.
- Inside storage per day (after the first six hours) - \$40.00 plus \$2.00 per foot for vehicles over 20 feet in length.
- Outside storage per day (after the first six hours) - \$40.00 plus \$1.00 per foot for vehicles over 20 feet in length.
- Hourly charge in prorated quarter hour increments beginning 60 minutes after arrival - \$300.00.
- Administrative fee per notification - \$25.00.

The daily storage rate must be prorated in six-hour increments when the vehicle is retrieved by the owner or his agent. The administrative fee may only be charged when notice is sent by the operator to the motor vehicle owner and any lien holder(s).

Ordinary towing and road service shall include the use of a sling or wheel lift when required to be used to render the service, and no additional charges are to be made for use of the sling or wheel lift.

### **Additional rates:**

- (a) For extraordinary tows, an hourly rate may be charged by the tow company. Whether the tow is extraordinary and eligible for the additional hourly charge shall be authorized or ratified by the police chief or his designee. The hourly rate shall be cumulative for all employees of the tow company involved in the extraordinary tow. The hourly rate shall be \$100.00 per hour.
- (b) For use of a GoJac or other type of dolly, a device to lift individual wheels manually, the rate shall be \$30.00.
- (c) If the tow company is required to remove either a front or rear axle in order to perform the tow, the rate shall be \$40.00.
- (d) If the tow company is required to remove a drive shaft in order to perform the tow, the rate shall be \$50.00.
- (e) Use of a Lo-Boy trailer for carrying vehicles the rate shall be \$300.00. However, a Lo-Boy shall not be used and therefore not charged simultaneously with a class C wrecker.
- (f) The tow company shall not charge for mileage for tows of vehicles or vessels on land picked up in the city and brought to the tow company's storage area. For any other tow, at the direction of the police department, the tow company may charge a mileage fee of \$3.00 per mile.
- (g) Sales tax shall be added to all charges under this section.

In the event a law enforcement officer needs a tow truck for a towable violation, and once the towing service has been requested by the officer at the violation site and the operator has advised the officer that he is en route to the request, should the owner or driver of the motor vehicle in violation return to the vehicle site before the operator has arrived at the motor vehicle there shall be no charge to the operator for the tow. If the operator returns to a vehicle before the operator has departed with the vehicle, and upon the officer's authorization to release the vehicle to the owner

or driver, then the owner or driver of the vehicle shall pay a charge of not more than one-half of the base rate for the class of towing service called for, only if the vehicle has been completely secured to the tow truck prior to the operator's actual arrival at the tow site consistent with F.S. S 715.07 and city ordinances regarding private property tows.

Towing company may charge an additional \$20.00 per vehicle as compensation for all certified letters and all other time and expenses incurred through compliance with F.S. S 713.78, provided that the charge shall not be due and owing until the towing service has complied with the notice requirements of the statute.

In addition to accepting cash, the tow company shall accept traveler's checks and credit cards from vehicle and vessel owners. The tow company shall afford owners a reasonable time to secure an acceptable method of payment and must have a written policy in place regarding accepting credit or debit cards on site and in their trucks at all times.

A wrecker operator may dispatch a heavier class of wrecker to the site but may charge no more than the rates applicable to the type of service required. Should a recreational vehicle, boat, or other type of trailer be attached to a motor vehicle which requires towing, and only one tow truck is required to remove the vehicle and its trailer, only one tow charge may be levied for the combined length of the vehicle and its trailer.

### **Gate Fee/Personal Property Recovery:**

Towing Company shall not charge a "gate fee" or similar charge, to allow an owner of personal property contained within an impounded vehicle, to retrieve his/her property as permitted by S713.78(10),F.S. during the first twelve (12) hours of impoundment After the first 12 hour period a "gate fee" may be imposed not to exceed \$35.00 if the owner requests to remove his/her property outside normal business hours of the storage facility. Normal business hours shall be defined as Monday-Friday, 8 a.m. to 6 p.m., not to include Saturday and Sunday and legal holidays.

Every towing service operating shall conspicuously display at its place of business the maximum charges that may be imposed for ordinary towing and road service. All operators shall provide a copy of the posted tow charges to any vehicle owner or operator upon request.

### **Prohibited Charges:**

Any charge or fee not specifically permitted by this Agreement.

**CONE OF SILENCE AFFIDAVIT**

STATE OF \_\_\_\_\_ )

: SS

COUNTY OF \_\_\_\_\_ )

I, the undersigned hereby duly sworn, depose and say that all owner(s), partners, officers, directors, employees and agents representing the firm of \_\_\_\_\_ have read and understand the limitations and procedures regarding communications concerning City of Key West Code of Ordinances Sec. 2-773 Cone of Silence.

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

Sworn and subscribed before me this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_

NOTARY PUBLIC, State of \_\_\_\_\_ at Large

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

## **Sec. 2-773. Cone of silence.**

**(a) Definitions.** For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition :

(1) Competitive Solicitation means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive Solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI" <sup>1</sup>), invitation to bid ("ITB") or any other advertised solicitation.

(2) Cone of Silence means a period of time during which there is a prohibition on communication regarding a particular Competitive Solicitation.

(3) Evaluation or Selection Committee means a group of persons appointed or designated by the City to evaluate, rank, select,

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\* (Coding : Added language is underlined; deleted language is ~~struck through~~.)

or make a recommendation regarding a Vendor or the Vendor' s response to the Competitive Solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.

(4) Vendor means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the City to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a Competitive Solicitation for compensation or other consideration .

(5) Vendor's Representative means an owner, individual, employee, partner, officer, or member of the board of directors of a Vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub consultant who acts at the behest of a Vendor in communicating regarding a Competitive Solicitation.

**(b) Prohibited Communications .**

A Cone of Silence shall be in effect during the course of a Competitive Solicitation and prohibit :

(1) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor' s Representative and the City's administrative staff including, but not limited to, the city manager and his or her staff ;

(2) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor' s Representative and the Mayor, City Commissioners, or their respective staff ;

(3) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and any member of a City evaluation and/or selection committee therefore ;

and

(4) Any communication regarding a particular Competitive Solicitation between the Mayor, City Commissioners, or their respective staff, and a member of a City evaluation and/or selection committee, therefore .

**(c) Permitted Communications**

Notwithstanding the foregoing, nothing contained herein shall prohibit :

(1) Communication between members of the public who are not Vendors or a Vendor's representative and any city employee, official or member of the City Commission;

(2) Communications in writing at any time with any city employee, official or member of the City Commission, unless specifically prohibited by the applicable Competitive Solicitation.

(A) However, any written communication must be filed with the City Clerk. Any City employee, official or member of the City Commission receiving or making any written communication must immediately file it with the City Clerk.

(B) The City Clerk shall include all written communication as part of the agenda item when publishing information related to a particular Competitive Solicitation;

(3) Oral communications at duly noticed pre-bid conferences ;

(4) Oral presentations before publicly noticed evaluation and/or selection committees ;

(5) Contract discussions during any duly noticed public meeting ;

(6) Public presentations made to the City Commission or advisory body thereof during any duly noticed public meeting;

(7) Contract negotiations with city staff following the award of a Competitive Solicitation by the City Commission; or

(8) ( 8) Purchases exempt from the competitive process pursuant to section 2-797 of these Code of Ordinances;

**(d) Procedure**

(1) The Cone of Silence shall be imposed upon each Competitive Solicitation at the time of Public Notice of such solicitation as provided by section 2-826 of this Code . Public notice of the Cone of Silence shall be included in the notice of the Competitive Solicitation. The city manager shall issue a written notice of the release of each Competitive Solicitation to the affected departments, with a copy thereof to each Commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

(2) The cone of Silence shall terminate at the time the city commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the competitive solicitation, or takes other action which ends the competitive solicitations.

(3) Any City employee, official or member of the City Commission that is approached concerning a Competitive Solicitation while the Cone of Silence is in effect shall notify such individual of the prohibitions contained in this section. While the Cone of Silence is in effect, any City employee, official or member of the City Commission who is the recipient of any oral communication by a potential Vendor or Vendor's Representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.

**(e) Violations/penalties and procedures .**

(1) A sworn complaint alleging a violation of this ordinance may be filed with the City Attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code .

(2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the Competitive Solicitation void at the discretion of the City Commission.

(3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee .

(4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal .

(5) If a Vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the Vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new Competitive Solicitation. The City's Purchasing Agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a Vendor of this section.

EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT

STATE OF FLORIDA

SS:

COUNTY OF \_\_\_\_\_)

I, the undersigned hereby duly sworn, depose and say that the firm of \_\_\_\_\_ provides benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses per City of Key West Ordinance Sec. 2-799.

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

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

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida at Large

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

## City Ordinance Sec. 2-799

### Requirements for City Contractors to Provide Equal Benefits for Domestic Partners

**(a) Definitions.** For purposes of this section only, the following definitions shall apply:

- (1) Benefits means the following plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package: sick leave, bereavement leave, family medical leave, and health benefits.
- (2) Bid shall mean a competitive bid procedure established by the city through the issuance of an invitation to bid, request for proposals, request for qualifications, or request for letters of interest.
- (3) Cash equivalent means the amount of money paid to an employee with a domestic partner in lieu of providing benefits to the employee's domestic partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

#### **The cash equivalents of the following benefits apply:**

- a. For bereavement leave, cash payment for the number of days that would be allowed as paid time off for the death of a spouse. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.
  - b. For health benefits, the cost to the contractor of the contractor's share of the single monthly premiums that are being paid for the domestic partner employee, to be paid on a regular basis while the domestic partner employee maintains such insurance in force for himself or herself.
  - c. For family medical leave, cash payment for the number of days that would be allowed as time off for an employee to care for a spouse who has a serious health condition. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.
- (4) Contract means any written agreement, purchase order, standing order or similar instrument entered into pursuant to the award of a bid whereby the city is committed to expend or does expend funds in return for work, labor, professional services, consulting services, supplies, equipment, materials, construction, construction related services or any combination of the foregoing.
  - (5) Contractor means any person or persons, sole proprietorship, partnership, joint venture, corporation, or other form of doing business, that is awarded a bid and enters into a covered contract with the city, and which maintains five (5) or more full-time employees.

- (6) Covered contract means a contract between the city and a contractor awarded subsequent to the date when this section becomes effective valued at over twenty thousand dollars (\$20,000).
- (7) Domestic partner shall mean any two adults of the same or different sex, who have registered as domestic partners with a governmental body pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partner who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the City of Key West pursuant to Chapter 38, Article V of the Key West Code of Ordinances.
- (8) Equal benefits mean the equality of benefits between employees with spouses and employees with domestic partners, and/or between spouses of employees and domestic partners of employees.

**(b) Equal benefits requirements.**

- (1) Except where otherwise exempt or prohibited by law, a Contractor awarded a covered contract pursuant to a bid process shall provide benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses.
- (2) All bid requests for covered contracts which are issued on or after the effective date of this section shall include the requirement to provide equal benefits in the procurement specifications in accordance with this section.
- (3) The city shall not enter into any covered contract unless the contractor certifies that such contractor does not discriminate in the provision of benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees.
- (4) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan, to the city's procurement director prior to entering into such covered contract.
- (5) The city manager or his/her designee shall reject a contractor's certification of compliance if he/she determines that such contractor discriminates in the provision of benefits or if the city manager or designee determines that the certification was created, or is being used for the purpose of evading the requirements of this section.
- (6) The contractor shall provide the city manager or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section upon each new bid, contract renewal, or when the city manager has received a complaint or has reason to believe the contractor may not be in compliance with the provisions of this section. This shall include but not be limited to providing the city manager or his/her designee with certified copies of all of the contractor's records pertaining to its benefits policies and its employment policies and practices.

- (7) The contractor may not set up or use its contracting entity for the purpose of evading the requirements imposed by this section.

**(c) Mandatory contract provisions pertaining to equal benefits.** Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to comply with the applicable provisions of this section. The language shall include provisions for the following:

- (1) During the performance of the covered contract, the contractor certifies and represents that it will comply with this section.
- (2) The failure of the contractor to comply with this section will be deemed to be a material breach of the covered contract.
- (3) If the contractor fails to comply with this section, the city may terminate the covered contract and all monies due or to become due under the covered contract may be retained by the city. The city may also pursue any and all other remedies at law or in equity for any breach.
- (4) If the city manager or his designee determines that a contractor has set up or used its contracting entity for the purpose of evading the requirements of this section, the city may terminate the covered contract.

**(d) Enforcement.** If the contractor fails to comply with the provisions of this section:

- (1) The failure to comply may be deemed to be a material breach of the covered contract;  
or
- (2) The city may terminate the covered contract; or
- (3) Monies due or to become due under the covered contract may be retained by the city until compliance is achieved; or
- (4) The city may also pursue any and all other remedies at law or in equity for any breach;
- (5) Failure to comply with this section may also subject contractor to the procedures set forth in Division 5 of this article, entitled "Debarment of contractors from city work."

**(e) Exceptions and waivers.**

**The provisions of this section shall not apply where:**

- (1) The contractor does not provide benefits to employees' spouses.
- (2) The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
- (3) The contractor is a governmental entity.
- (4) The sale or lease of city property.
- (5) The provision of this section would violate grant requirement, the laws, rules or regulations of federal or state law (for example, the acquisition services procured pursuant to Chapter 287.055, Florida Statutes known as the "Consultants' Competitive Negotiation Act").

- (6) Provided that the contractor does not discriminate in the provision of benefits, a contractor may also comply with this section by providing an employee with the cash equivalent of such benefits, if the city manager or his/her designee determines that either:
  - a. The contractor has made a reasonable yet unsuccessful effort to provide equal benefits. The contractor shall provide the city manager or his/her designee with sufficient proof of such inability to provide such benefit or benefits which shall include the measures taken to provide such benefits or benefits and the cash equivalent proposed, along with its certificate of compliance, as is required under this section.
  
- (7) The city commission waives compliance of this section in the best interest of the city, including but not limited to the following circumstances:
  - a. The covered contract is necessary to respond to an emergency.
  - b. Where only one bid response is received.
  - c. Where more than one bid response is received, but the bids demonstrate that none of the bidders can comply with the requirements of this section.
  
- (f)** City's authority to cancel contract. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity prequalification, or otherwise deny a person or entity city business.
- (g)** Timing of application. This section shall be applicable only to covered contracts awarded pursuant to bids which are after the date when this section becomes effective.

**NON-COLLUSION AFFIDAVIT**

STATE OF FLORIDA                    )  
  :  
SS COUNTY OF MONROE            )

I, the undersigned hereby declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

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

Sworn and subscribed before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida at Large

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

**ANTI-KICKBACK AFFIDAVIT**

STATE OF \_\_\_\_\_)

: SS

COUNTY OF \_\_\_\_\_)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

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

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires:

**SWORN STATEMENT UNDER SECTION 287.133(3)(A)  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

*THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.*

1. This sworn statement is submitted with Bid or Proposal for \_\_\_\_\_  
\_\_\_\_\_

2. This sworn statement is submitted by \_\_\_\_\_  
(name of entity submitting sworn statement)

whose business address is \_\_\_\_\_  
\_\_\_\_\_

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

(If the entity has no FEIN, include the Social Security Number of the individual  
signing this sworn statement \_\_\_\_\_)

3. My name is \_\_\_\_\_  
(please print name of individual signing)

and my relationship to the entity named above is \_\_\_\_\_

4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, any bid or contract for goods or services to be provided to any public or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, material misrepresentation.

5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means

1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1)(8), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies).

\_\_\_\_ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)

\_\_\_\_ There has been a proceeding concerning the conviction before a hearing of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_ The person or affiliate has not been put on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services.)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority,

\_\_\_\_\_  
(name of individual signing) Who, after first being sworn by me, affixed his/her

signature in the space provided above on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

**CITY OF KEY WEST INDEMNIFICATION FORM**

To the fullest extent permitted by law, the CONTRACTOR expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees \*(herein called the "indemnitees") from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnitees for indemnification shall be limited to the amount of CONTRACTOR's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONTRACTOR or of any third party to whom CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

CONTRACTOR: \_\_\_\_\_

SEAL:

Address

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

DATE: \_\_\_\_\_

# Exhibit C

## C.F.R. 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to find sample language. Please be aware that this is sample language only and that the Non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the Non-Federal entity's own procedures in that area.

### 1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

### 2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the Non-Federal entity including how it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

### 3. Equal Employment Opportunity.

- a. 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. 601 .3 must include the equal opportunity clause provided under 41 C.F.R. 60I .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.

b. Key Definitions.

(1) 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.

(2) 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.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4 requires the insertion of the following contract clause:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(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 considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) 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.

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

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as 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.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (I) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 4. Davis Bacon Act and Copeland Anti-Kickback Act.

a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, D.

c. 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.

d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3

(Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

f. The regulation at 29 C.F.R. 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where, the Pavis-Bacon Act does does the Copeland "Anti-Kickback Act." However for purposes of grant

Programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(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 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 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.

5. Contract Work Hours and Safety Standards Act.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Where applicable (See 40 U.S.C. 3701), all contracts awarded by the Non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E.

c. Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

d. 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.

e. The regulation at 29 C.F.R. 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:  
Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the

employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

## 6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement does not apply to the Public Assitance. Hazard Mitigation Grant Program, Fire Management Assistance

Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households — Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

b. If the FEMA award meets the definition of "funding agreement" under 37 C.F.R.

401.2(a) and the non-Federal entity 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 Non-Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA. See 2 C.F.R. Part 200, Appendix II, F.

c. The regulation at 37 C.F.R. 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$ 150,000:

"Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management

Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part-with Federal assistance provided by FEMA."

#### 8. Debarment and Suspension.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, H; and Procurement Guidance for Recipients and Subrecipients

Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDA T) Field Manual Chapter IV, 6.d, and Appendix C, 2 [hereinafter PDA T Supplement]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. 180.530; PDAT Supplement, Chapter IV, 6.d and Appendix C, 2.

d. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:

(1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

(2) The contract requires the approval of FEMA, regardless of amount.

(3) The contract is for federally required audit services.

(4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

"Suspension and Debarment

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

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

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000,

subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

”

#### 9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, 4.
- c. 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. See PDA T Supplement, Chapter IV, 6.c and Appendix C, 4.
- d. The following provides a Byrd Anti-Lobbying contract clause:

#### "Byrd Anti-Lobbying Amendment. 31 U.S.C. 1352 (as amended)

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

#### APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

I. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than 10,000 and not more than \$1000,000 for each such failure.

The Contractor, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_

Signature of Contractor's Authorized Official

\_\_\_\_\_

Name and Title of Contractor's Authorized Official

\_\_\_\_\_

Date

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10. Procurement of Recovered Materials.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. 6962). See 2 C.F.R. Part 200, Appendix II, J; 2 C.F.R. 200.322; PDAT Supplement, Chapter V, 7.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. 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 by the preceding fiscal year exceeded \$1 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.

d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule.

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>."

11. Additional FEMA Requirements.

a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, XXVI (2013).

d. The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

12. DHS Seal, Logo and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, XXV (2013).

b. The following provides a contract clause regarding DHS Seal. Logo. and Flags: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval."

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations. and Executive Orders: "This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The

contractor

executive will comply will all applicable federal law, regulations, orders, FEMA policies, procedures, and directives."

14. No Obligation by Federal Government.

a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. The following provides a contract clause regarding no obligation by the Federal Government: "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The Non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract