



Request for Proposal- Comprehensive Disaster Recovery Management Service

The Town of Yankeetown (hereinafter the "Town") is soliciting proposals from qualified firms for Professional Services related to all aspects of Federal Public Assistance and Mitigation Assistance following a declared disaster incident.

proposals shall be submitted in an envelope marked on the outside with "Request for Proposal-comprehensive Disaster Recovery Management Services" to

William Ary
6241 Harmony Ln
Yankeetown, FL 34498

Yankeetown is soliciting Proposals for disaster recovery management services for a qualified Vendor (s) to enter into pre-event contracts with activating entities for the following services: vendors shall provide disaster recovery services. This is a multi-jurisdiction solicitation; however, each Activating Entity will contact directly with the awarded Vendor entirely in the Activating Entity's sole discretion.

This request for proposal, hereafter, RFP, is designed to solicit Proposals for qualified Vendors for Yankeetown. Each area of Yankeetown has its own unique geographic challenges and all Vendors are encouraged to research, prior to bid submission, the areas listed below, and evaluate their ability to respond to the unique needs of the Town

Entities that are eligible to activate a disaster recovery management service contract awarded by the activating entity pursuant to this RFP included eligible entities as outlined in 44 CRF 206.221(e) all units of government located within Yankeetown.

Requests will be received at the above address until 2 pm on December 6, 2024, at which time they will be publicly opened at 6241 Harmony Ln Yankeetown, FL 34498. The Town reserves the right to reject any or all proposals submitted and to waive any minor technicalities. The Town also reserves all rights to negotiate with any or all firms submitting qualifications. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to submit qualifications and firms using subcontractors must solicit such firms in the subcontracting process.

Introduction

Yankeetown sits on the west coast of Florida, an area known for its susceptibility to Gulf basin hurricanes. While landfalling storms have been frequent and of a severe nature over the course of the past decade, prior to the turn of the century the community was provided a glimpse of what severe hurricanes might do to the community and Town operations in the wake of their passage. Equally as important, while landfalling hurricanes present the most clear and present threat to the Western coast of Florida, disaster preparedness and post disaster recovery operations must address a multitude of events including, but not limited to: hurricanes; floods; and tornadoes.

Yankeetown staff members are experienced and more than capable of handling post disaster environments; however, the potential for protracted recovery operations and the need to also address daily operations in the recovery setting have led the Town to solicit potential post-disaster assistance from qualified contracting firms. Firms submitting proposals should be equally or more experienced than Town staff members in managing post event operations. As currently envisioned, the Town would employ the selected contractor on an As-NEEDED basis with the ability to ramp up or ramp down the level of service based upon the complexity of the disaster and the then-pending workload of Town staff members.

Yankeetown seeks experienced contractors to work with the Town for the provision of services. A premium will be placed on firms who can demonstrate success and experience in providing the required service. This RFP is designed to set the parameters around which the Town will seek and evaluate a future partner prior to an award of the contract. We encourage all potential vendors to carefully study the material contained herein as it sets the tone for Towns expectations going forward in this endeavor.

Term

The term of this contract agreement shall be for three (3) years with two additional one (1) year optional renewal periods.

Scope of Preferred Service

The purpose of this Request for Proposal (RFP) is for Yankeetown to acquire as-needed comprehensive disaster recovery management services. The selected contractor, working closely with and at the direction of the Town Administrator, will assist in strategically managing the project development and administration of any and all local, state and federal disaster programs related to declared emergencies or disasters that occur during the

term of this contract. Services provided in the development of such programs may include, but are not limited to the following. The selected vendor MUST be able to respond and provide disaster recovery management services within 48 hours of receiving the Activating Entity notice to proceed letter. The vendor must demonstrate in his or her bid documents the ability to provide adequate and properly trained personnel for this function within 48 hours of receiving a Notice to Proceed.

Yearly Service- Pre-Storm Meeting

1. The selected vendor will be required to coordinate and hold a yearly meeting via zoom to educate Town staff on the required forms, timesheets, and damage assessments that will be required to seek maximum FEMA reimbursement if a disaster was to hit our area. The meetings will include the following agencies:
 - Town Clerk
 - Town Council
 - Town Attorney
 - Dedicated town contractors during emergencies.

FEMA Public Assistance (PA) Advisory Services

1. Develop a process/system to efficiently submit grant applications, identify eligible projects, capture costs, prepare cost reports, reconcile invoices, and close-out projects.
2. Attend meetings with relevant local, state, and federal officials to address eligibility and process issues.
3. Provide knowledge, experience and technical expertise in dealing with federal and state regulations, specifically including, but not limited to, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Post-Katrina Emergency Management Reform Act of 2006, and the Sandy Recovery Improvement Act of 2013.
4. Proactively identify and resolve issues that may arise related to funding of completed and forthcoming work.
5. Provide engineering, cost estimating, and architectural support, among other types of technical assistance.
6. Assess damage to public infrastructure components, transportation systems, and facilities.
7. Obtain, analyze and gather field documentation, including gathering relevant records (including timekeeping and assignment records) in order to extract pertinent information.
8. Review all data and supporting documentation to determine eligible adequate costs.

9. Evaluate and assist in the formulation of FEMA PA Emergency and Permanent Work Project Worksheets, to include COST Estimating, developing Detailed Damage Descriptions and Dimensions ("DDD's") and project Scope of Work ("SOW".)
10. Assist in development of hazard mitigation proposal under Section 406 and 404 of the Stafford Act. (See further detail herein, below.)
11. Evaluate alternate and/or improved projects.
12. Evaluate the appropriateness of the use of FEMA pilot programs including the Section 428 Public Assistance Alternative Procedure for Permanent Work and Debris Removal.
13. Review Project Worksheets (PW) to determine final eligible costs and third-party refunds/reimbursements.
14. Reconcile eligible costs and prepare PW versions.
15. Prepare first and second appeals, and work with the Town through any arbitration.
16. Monitor reconstruction efforts, reconcile change orders with PW scope of repair, and prepare progress payments.
17. Perform PW closeout.
18. Prepare project for audit.
19. Respond to audit findings, as required.

FEMA 404 Hazard Mitigation Grant Program (HMGP)

1. Assist in identifying, developing and evaluating opportunities for hazard mitigation projects to reduce or eliminate risk from future events.
2. Prepare hazard mitigation proposal, grant applications, benefits cost analysis, and other services related to Hazard Mitigation Grant Program, Pre-Disaster Mitigation, and other mitigation programs.

Financial and Grant Management Support

1. Advise on FEMA's policies, regulations, practice and procedures and how to track costs, including direct administrative costs to facilitate reimbursement for all eligible client costs, including contractor costs.
2. Provide general grant management advice.
3. Perform internal controls assessment.
4. Conduct pre-audit activities and prepare disaster recovery projects for audit.
5. Meeting with Town /State/Federal representatives in connection with the programmatic, financial, contracting and accounting services related to applicable regulations.
6. Prepare required reports, including the Public Assistance Quarterly Progress Report, for the State and FEMA, as needed.
7. Provide oversight of contractors' billing to ensure that they invoice in accordance with their contract, and that all costs eligible for the disaster grant funding are documented and claimed.
8. Categorize, record, track, and file costs in support of the financial reimbursement process. Track Project Worksheet status and status of payment from the State.
9. Assist in providing interagency (Federal, State, Town) coordination and technical support, as well as identifying funding resources that may be available to assist in the long-term recovery process.
10. Collect Policies, Bid Tabs, Contracts, Agreements, etc.

11. Work with FEMA Project Specialist in compiling documentation for the Project Writers.
12. Perform analysis of labor vs equipment hours, etc.

Information Technology, Data Management and Reporting Support

1. Provide viable integrated IT solutions (compatible with existing Town applications) that support the management and implementation of the disaster recovery programs.
2. Manage data for disaster recovery programs.
3. Provide expertise using systems to report, manage, and analyze information to optimize and improve the disaster recovery programs.

HUD Community Development Block Grant Disaster Recovery

1. Provide knowledge, experience, technical competence, and oversight in the planning, administration, and implementation of eligible CDBG activities as identified in the Code of Federal Regulations (to include CDBG-DR funds).
2. Conduct assessments that identify housing, infrastructure, and the economic disaster recovery need.
3. Develop and submit HUD required Action Plans for Disaster Recovery, Action Plans Amendments, performance reporting, and grant closeout.

Pre-Disaster Cost Recovery Plan Development

1. Develop the general framework, processes, and tools to facilitate cost recovery activities associated with a federally or state declared disaster.
2. Assist in the identification of the primary roles and responsibilities to effectively coordinate the provision of PA and other federal and/or state grant funding programs.

Long-Term Disaster Recovery and Redevelopment Planning

1. Development the general framework, processes, and tools to facilitate a long-term disaster recovery and redevelopment activities associated with a federally and/or state declared disaster.
2. Specify the triggering event for the transition from response to recovery
3. Conduct an in-depth analysis of existing plans, policies, and procedures related to the recovery and redevelopment
4. Establish clear roles and responsibilities for all recovery and redevelopment stakeholders.

Pre-Proposal Questions

Questions concerning the specifications in this Request for Proposal (RFP) should be directed to the Town Administrator, William Ary, admin@yankeetownfl.org. Questions will be received until December 6, 2024.

Proposal Submittal Requirements

Proposals must follow the format as defined in the section marked "Proposal Format".

Bidders must submit one (1) signed original and three (3) copies, of the "Post Disaster Recovery Services" proposal. Proposals must be enclosed in a sealed envelope or package and clearly marked: "Comprehensive Disaster Recovery Management Services". Hard copies must be received by the Town on or before 2 pm on December 6, 2024. Deliver or send proposals to the following mailing/physical address:

Town of Yankeetown
Attn: William Ary
6241 Harmony Ln
Yankeetown FL, 34498

Proposals received after the "RFP Due" deadline above will not be considered and will be returned unopened to the return address to the submission envelope. The outside of the submittal package must be clearly marked. The Town reserves the right to reject any or all proposal for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the proposal. Contractors must respond to the entire Request for Proposal. Any proposal received by the Town that are incomplete in their responses will be immediately disqualified.

Rights to Submitted Material

All proposals, responses, inquires, or correspondence relating to or in reference to this RFP, and all reports, charts, and other documentational submitted by Proposers (other than materials submitted as and qualifying as trade secrets under Florida Law) shall become the property of the Town when received and the entire proposal shall be subject to the public records laws of the State of Florida except where a proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by Florida Law and marked in bold "**Confidential**".

The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this Request for Proposal.

Proposal Format

Proposals must be clear, succinct, and not exceed 40 pages or 20 sheets of 8 1/2" x 11" paper of no less than 12-point font. Responses must follow the format outlined herein. The Town may reject as non-responsive, at its sole discretion, any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner. Sections should be tabbed to identify the location of the required information.

- A. Cover Letter/Letter of Intent
- B. Executive Summary
- C. Project Understanding and Approach
- D. Team Organization, Experience and Certifications/Qualifications
- E. Consultants and/or Subcontractors
- F. References
- G. Cost Proposal
- H. Additional Requirements

Cover Letter/ Letter of Intent

The cover letter shall be addressed to Ashley Bennett, Purchasing Agent. It must contain the following:

- Identification of organization, including name, address and telephone number.
- Name, title, address, and telephone number of contact person during period of proposal evaluation.
- A statement to the effect that the proposal shall remain valid for a period of not less than 90 calendar days from the date of submittal.
- Signature of a person authorized to bind the Firm to the term of the proposal.

A. Executive Summary

In a brief narrative, describe the overall approach and plans to meet the requirements of the RFP. The intent of this narrative is to convey to the Town that the Offeror understands the nature of the work and the level of effort necessary to successfully provide the defined services.

B. Project Understanding, Approach and Schedule

This section shall include, in narrative, outline, and/or graph form the offeror's approach to accomplishing the tasks outlined in the Scope of Services section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

C. Team Organization, Experience and Certifications/Qualifications

The information requested in this section should describe the qualifications of the firm and key staff to demonstrate the Respondent's ability to perform the outlined services. Firms being able to demonstrate the following corporate/individual experience and qualifications will be awarded higher scores in the RFP evaluation process.

1. Corporate Characteristics

- Minimum Standards include experience with:
 - o FEMA Public Assistance program
 - o Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; Federal Regulations (including 44CFR, 2 CFR Part 200); the Sandy Recovery and Improvement Act; and, FEMA policies as a prime contractor
 - o All categories of natural disasters
 - o Tracking force labor accounts, equipment reimbursement, supplies, donated services, contracted services, and mutual aid
 - o Comprehensive financial management of large-scale disaster recovery and reconstruction programs, including establishment of internal controls and improper payment reviews.
 - o Developing Letters of Interest for FEMA 404 and 406 Mitigation programs
 - o Performance supporting after action reports and incorporating best practices and lessons learned into plans, policies, and procedures
 - o Disaster program closeouts

Preference will be given to firms that can demonstrate experience the following levels of experience.

- o 10+ years of experience with Public Assistance Grant Program at the federal, state and local level
- o Working with local governments located in the State of Florida
- o Work with non-federally declared state emergencies
- o Federal loans of \$200 million or more
- o PA and HUD CDBG-DR funds, to include innovative uses
- o Administration of FEMA Disaster Loan Program
- o Comprehensive administrative and financial management of large scale, post disaster functions
- o FEMA pilot programs
- o Knowledge and understanding of HUD's Disaster Recovery Grant Reporting (DRGR) data management system including Action Plan set-up and quarterly reporting.
- o Knowledge of HUD's requirements for housing programs including rehabilitation, reconstruction, acquisition, buyout, relocation, and rental assistance.
- o Knowledge of HUD's requirements for infrastructure and public facilities including FEMA PA match programs; economic development activities; and HUD requirements for calculating duplication of benefits in compliance with the Stafford Act
- o Proven track record proactively and successfully solving disagreements during project formulation rather than through appeals and arbitration
- o Experience developing Recovery Redevelopment Plans. Long Term Recovery Plans following the National Disaster Recovery Framework, Disaster Recovery Plans, and providing EOC Augmentation and Response Planning

2. Staff Qualifications. Respondent should submit an organizational chart illustrating team members and relationships for individuals who will be provided in service to the Town in the post disaster response. Included with the organizational chart should be resumes stating the qualifications (including education and years of experience with disaster recovery operations) of the proposed staff members. Listed below are the positions that should be included in the organizational chart. Additional consideration will be given in the submission evaluation process for team members whose years of experience who meet or exceed the number in parentheses next to the position.

- Project Executive (15 yrs.)
- Project Manager (10 yrs.)
- Project Accountant (5 yrs.)
- Closeout Specialist (5 yrs.)

D. Subcontractor Qualifications

The Town desires to enter a contract with one Respondent that will be responsible for all defined services. If the Respondent plans on using consultants and/or subcontractors as part of its implementation plan, then provide the company profile, name, address, telephone number and email address for all consultants and/or subcontractors providing support. Define the responsibilities and give a description of services to be provided by consultants and/or subcontractors. Describe the Firm's business and reporting relationship with any consultants and/or subcontractors. Identify certified Minority Business Enterprises (MBE) or Women Business Enterprises (WBE) firms, if any. Include references and resumes for all third-party consultants and/or subcontractors in the proposal. The Town has the right to accept or reject any changes made to the proposed project team members, including the use of consultants and/or subcontractors.

E. References

Provide a list of municipalities/counties that your firm has partnered with for these types of services. Any City/Town from the submitted list may be randomly selected and contacted as part of the Respondent's evaluation process. Each client listed should include the following information.

- Name of Organization and Contact
- Title of Contact
- Address (delivery and email)
- Telephone Numbers

F. Cost Proposal

Respondent should submit a proposal setting forth the defined costs for service. Proposed costs must include hourly rates as set forth the Cost Proposal Form attached hereto as Appendix B.

G. Additional Requirements

Respondents shall be required to sign a contract for services developed and approved by the Town . A copy of the terms and conditions contained in the standard City contract for services is attached hereto as Appendix A. Any proposed exceptions, deletions or additions should be noted at the time of submission of proposal.

Evaluation Criteria

This is not a bid. There will not be a public bid opening. Proposals will be evaluated based on but not necessarily limited to the following criteria:

Criteria	Weights
Proposed Cost.	70%
Qualifications and experience of the proposed team members for the requested services.	25%
Technical approach to the project.	5%

Final Selection

The Town Council, will be responsible for the proposal evaluations in accordance with the criteria listed above, will evaluate all proposal received as specified. The Town Council, in applying the major criteria to the proposal, may consider additional sub-criteria beyond those listed, as may come to light through the review of the various proposals. During the evaluation period, Yankeetown reserves the right to interview the top selected firm or all the responding firms. Yankeetown 's final selection will be the firm which, in the Town 's opinion, is the most responsive and responsible, meets the Town 's requirements in providing this service, and is in the Town 's best overall interest. The Town maintains the sole and exclusive right to evaluate the merits of the proposal received.

Firms will be objectively evaluated based on their responses to the project scope outlined in the RFP. The written proposal should clearly demonstrate how the firm could best satisfy the requirements of Town.

Proposed costs quoted must be held firm for 90 days after the RFP is due. The Town reserves the right to make an award without further discussion of the proposal submitted. The Town shall not be bound or in any way obligated until both parties have executed a contract. The Town also reserves the right to delay the award of a contract or to not award a contract. The RFP may be awarded by individual task or total

proposal, whichever is most advantageous to Yankeetown.

The general conditions and specifications of the RFP and the selected proposal, as amended by agreement between the Town and the Contractor including e-mail or written correspondence relative to the RFP, may become part of the contract documents. Failure of the Contractor to perform as represented may result in elimination of the Contractor from competition or in contract cancellation or termination.

**Comprehensive Disaster Recovery Management Services
PROPOSAL CERTIFICATION**

Proposers Signature: _____ **Date:** _____

By Signing above, I Certify that I have carefully read and fully understand the information contained in this RFP; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign Proposal on behalf of my organization. **It is the offeror's responsibility to assure that all addenda have been reviewed prior to proposal submission.**

BY _____

(Printed):

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

The proposer supplies the information recorded below for use in the preparation of the contract documents, in event of contract award:

1. Please indicate type of business organization:

- (a) Proprietorship _____
- (b) Partnership _____
- (c) Corporation _____
- (d) Limited Liability Co. _____

2. If business is a Corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the

contract on behalf of corporation (generally President and Secretary).
Firm is incorporated in what state?

If firm is a foreign corporation, does firm have a certificate of authority from the Florida Secretary of State? _____

3. If business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

Is this a limited or general partnership? _____

If a limited partnership, what is state of registration? _____

If business is a foreign limited partnership, does business have a certificate of authority from the Florida Secretary of State? _____

4. If business is a Proprietorship, please answer the following:

Name of owner: _____

5. If business is a limited liability company, please answer the following:

List the names and title of managers or member-managers who will execute the contract on behalf of the company? _____

What is state of organization? _____

If business is a foreign limited liability company, does business have a certificate of authority from the Florida Secretary of State? _____

6. For all bidders:

If the business operates under an assumed name, what is the assumed name?

APPENDIX A

CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS

The following terms and conditions apply to this *Request for Proposal* solicitation process, and will be incorporated into the resulting contract as applicable. Please note that any exceptions to the following requirements, as well as other sections of this *Request for Proposal* should be addressed in a separate section of the Respondent's proposal.

INSURANCE

A. Commercial General Liability

1. CONTRACTOR shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONTRACTORS, products- completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3. The Town of Yankeetown, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, leased or used by the CONTRACTOR; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the Town of Yankeetown, its officers, officials, agents, and employees.
4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
5. The CONTRACTOR's Commercial General Liability insurance shall be primary as respects the Town of Yankeetown, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the Town of Yankeetown, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR's insurance.
6. The insurer shall agree to waive all rights of subrogation against the Town of Yankeetown, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the Town of Yankeetown.

B. Workers' Compensation and Employer's Liability

1. CONTRACTOR shall maintain Workers' Compensation as required by the general statutes of the State of Florida and Employer's Liability Insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.
2. The insurer shall agree to waive all rights of subrogation against the Town of Yankeetown, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the

Town of Yankeetown.

3. The U.S. Longshore and Harbor workers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.

4. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

C. Business Auto Liability

1. CONTRACTOR shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.

2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

4. Pollution liability coverage equivalent to that provided under the ISO pollution liability- broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.

5. CONTRACTOR waives all rights against Yankeetown, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section

11.C.1 of this agreement.

6. The CONTRACTOR's Business Auto Liability insurance shall be primary as respects Yankeetown, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by Yankeetown, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR's insurance.

D. Professional Liability Insurance

1. CONTRACTOR shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONTRACTOR's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONTRACTOR's services as defined in this contract. Coverage shall be written subject to limits of not less than \$2,000,000 per claim. Occurrence policies are highly preferred.

2. If coverage required in paragraph 1 above is written on a claims-made basis, the CONTRACTOR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that the continuous coverage will be maintained, or an extended discovery period will be exercised for a period of 4 (four) years beginning from the time that work under the contract is complete.

E. Deductibles and Self-Insured Retentions

1. The CONTRACTOR shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not Yankeetown is an insured under the policy.

F. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be canceled by either party except after 30 days prior written notice has been given to Yankeetown, 6241 Harmony Ln Yankeetown FL 34432
2. If CONTRACTOR's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of Florida with an A.M. Best's rating of no less than A VII unless specific approval has been granted by Yankeetown.

H. Evidence of Insurance

1. The CONTRACTOR shall furnish Yankeetown with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to Yankeetown with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

I. Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONTRACTOR's coverage, and the CONTRACTOR shall be responsible for assuring that all subcontractors are properly insured.

J. Conditions

1. The insurance required for this contract must be on forms acceptable to the Yankeetown.
2. The CONTRACTOR shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONTRACTOR without prior written approval of the Town of Yankeetown.
3. The CONTRACTOR shall promptly notify the Safety & Risk Manager at (252) 728-8405 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
4. Yankeetown reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of Yankeetown to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of Yankeetown to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance.
6. By requiring insurance herein, Yankeetown does not represent that coverage and limits will necessarily be adequate to protect the CONTRACTOR and such coverage and limits shall not be deemed as a limitation of CONTRACTOR's liability under the indemnities granted to Yankeetown in this contract.
7. Yankeetown shall have the right, but not the obligation of prohibiting CONTRACTOR or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Yankeetown.

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the TOWN, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the TOWN or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the TOWN, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the TOWN, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the TOWN, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep and save harmless and defend the TOWN as herein provided. The intention of the parties is to apply and construe broadly in favor of the TOWN the foregoing provisions subject to the limitations, if any, set forth in Florida Statutes Section 725.06.

ASSIGNMENT

No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

COMPLIANCE WITH LAWS

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all regulations and directives from the Florida Department of Human Resources, the United States Environmental Protection Agency, the Florida Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the Florida Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with Fla. Stat. §501.171.

CONTRACTOR REPRESENTATIONS AND WARRANTIES

Independent CONTRACTOR. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONTRACTOR will be an independent CONTRACTOR and not the TOWN 's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the Florida revenue and taxation laws, the Florida Wage and Hour Act, the Florida Workers' Compensation Act, and the provisions of the Florida Employment Security Law. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that he/she/it is a separate and independent enterprise from the TOWN; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the TOWN, and the TOWN will not be liable for any obligation incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

Non-Discrimination. CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at TOWN 's option, in a termination or suspension of this agreement in whole or in part.

Interpretation/Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of Florida without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of Florida. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Yankeetown, Florida, and in said Town and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

Records. The TOWN has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the TOWN all records, notes, memorandum, data, documents or any other materials produced by CONTRACTOR in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONTRACTOR, the CONTRACTOR shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the TOWN upon request.

Ownership of Documents. The CONTRACTOR agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the TOWN, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the TOWN all records, notes, memorandum, data, documents or any other materials received or obtained from the TOWN in connection with services rendered pursuant to this Agreement.

ACKNOWLEDGEMENTS

Authority to Act/IDA Certification. Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of Florida, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Scrutinized Companies with Activities in Iran List created by the Florida State Board of Administration pursuant to Chapter 287 (the Iran Divestment Act) of the Florida Statutes. In compliance with the requirements of the Iran Divestment Act and Fla. Stat. § 287, CONTRACTOR shall not utilize in the performance of the contract any subcontractor that is identified on the Scrutinized Companies with Activities in Iran List.

Conflict of Interest. No paid employee of the TOWN shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONTRACTOR acknowledges that TOWN reserves all immunities, defenses, rights or actions arising out of TOWN 's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of TOWN 's entry into this Agreement.

Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

Non-Waiver of Rights. It is agreed that the TOWN 's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

Non-Appropriation. In the event no TOWN funds or insufficient TOWN funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the TOWN will immediately notify CONTRACTOR of such occurrence and this Agreement shall create no further obligation of the TOWN as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the TOWN of any kind whatsoever.

The CONTRACTOR shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the TOWN .

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONTRACTOR shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONTRACTOR agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

2 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 in order 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 the manner by which 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. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

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(b) 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 thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(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 (1) 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 Davis-Bacon Act does not apply, neither 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 also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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

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

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

a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, 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 into 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 (Nonprocurement 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 (PDAT) Field Manual Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter PDAT 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. 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 nonprocurement 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 nonprocurement 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. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R.

§ 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(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 into.

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

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:

1. 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 into 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 \$100,000 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"

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 \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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/comprehensive-procurement-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 Current 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 pre- approval.”

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 will comply will all applicable federal law, regulations, executive 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.

b. 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.

APPENDIX B

COST PROPOSAL FORM

The hourly labor rates shall include all applicable overhead and profit. All non-labor related other than direct costs will be billed to Yankeetown at cost without mark-up.

<u>POSITIONS</u>	<u>HOURLY RATES</u>
Project Executive	\$ _____
Subject Matter Expert	\$ _____
Project Manager	\$ _____
Project Accountant	\$ _____
Senior Closeout Specialist	\$ _____
Closeout Specialist	\$ _____
Training	\$ _____
Other: _____	\$ _____
Other: _____	\$ _____
Other: _____	\$ _____

OTHER REQUIRED POSITIONS

Proposer may include other positions, with hourly rates and attach a job description and required years of experience for each position. However, only the positions listed will be used in proposal evaluations. Hourly rates are for evaluation purposes only and in no way bind the Town into any agreement on hours worked.