

RESOLUTION NO. 09-06-46

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN J.B. COXWELL CONTRACTING, INC. AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE DISASTER RESPONSE SERVICES; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of Islands (the "Village") has retained the services of J.B. Coxwell Contracting, Inc. ("Coxwell") for disaster response services; and

WHEREAS, the Village has prepared a First Amendment to incorporate requirements of the Federal Highway Administration; and

WHEREAS, Coxwell has agreed to provide the services as amended by the First Amendment; and

WHEREAS, the Village Council finds that approval of the First Amendment between Coxwell and the Village attached hereto is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Amendment. The First Amendment between Coxwell and the Village to provide disaster response services, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the First Amendment.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village's Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the First Amendment.

Section 5. Execution of Agreement. The Village Manager is authorized to execute the First Amendment on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the First Amendment and to execute any extensions and/or amendments to the First Amendment, subject to the approval as to form and legality by the Village Attorney.

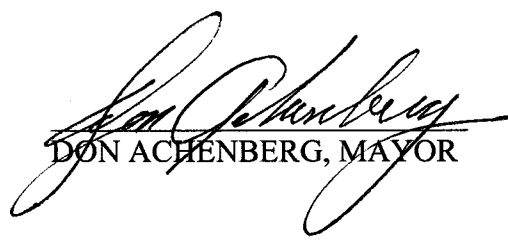
Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 25th day of June, 2009.

Motion to adopt by Vice Mayor Reckwerdt, second by Councilwoman Zima Borski.

FINAL VOTE AT ADOPTION

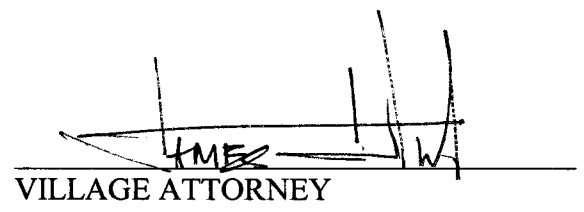
Mayor Don Achenberg	YES
Vice Mayor Michael Reckwerdt	YES
Councilmember Dave Boerner	YES
Councilwoman Jill Zima Borski	YES
Councilwoman Cathi Hill	ABSENT


DON ACHEBERG, MAYOR

ATTEST:


VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE
USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS:


VILLAGE ATTORNEY

**FIRST AMENDMENT TO
AGREEMENT FOR DISASTER RECOVERY SERVICES BETWEEN
ISLAMORADA, VILLAGE OF ISLANDS, AND J.B. COXWELL
CONTRACTING, INC.**

This First Amendment to the Disaster Recovery Services Agreement between Islamorada, Village of Islands, and J.B. Coxwell Contracting, Inc. (this "First Amendment") is made and entered into as of JULY 29, 2009 by and between Islamorada, Village of Islands, Florida, a municipal corporation of the State of Florida (the "Village") and J.B. Coxwell Contracting, Inc., a FLORIDA corporation (the "Contractor").

WITNESSETH

WHEREAS, as of April 24, 2008, the Village entered into a Disaster Recovery Services Agreement (the "Agreement") with J.B. Coxwell Contracting, Inc. (the "Contractor") to provide disaster recovery services; and

WHEREAS, the parties wish to incorporate certain laws, rules, regulations and provisions into the Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth in this First Amendment, the receipt and sufficiency of which is hereby acknowledged, the parties hereby amend the Agreement to read as follows:

Section 1. Amendment to Agreement. The parties hereby agree to amend and restate the Project Agreement by adding the following Section 8:

* * *

Section 8. INCORPORATION OF OTHER PROVISIONS

Village and Contractor wish to acknowledge certain laws, rules and regulations set forth herein and attached hereto as Exhibit "A", incorporated herein for all purposes. Exhibit "A" contains several provisions which the parties wish to include in the Agreement. Compliance with these provisions by the parties is required to allow Village to receive certain federal and/or state funding and/or reimbursement from these sources. Contractor covenants it has and will provide all services required under the Agreement in accord with all provisions and requirements of Exhibit "A".

Section 2. No Further Modifications. All other provisions of the Agreement, other than as specifically addressed herein, shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this First Amendment upon the terms and conditions above stated on the day and year first above written.

VILLAGE:

By: [Signature]
Kenneth Fields, Village Manager

Date: 6/26/09

Approved as to form and legal sufficiency for the use and benefit of Islamorada, Village of Islands:

By: [Signature]
Village Attorney

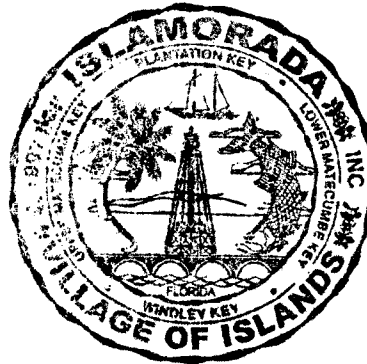
Date: 6/26/09

Attest:

By: [Signature]
Village Clerk

Date: 6/26/09

J.B. COXWELL CONTRACTING, INC.



By: [Signature]
EDDIE K. GREENE, (Title) VICE PRESIDENT OF OPERATIONS

Date: JULY 29, 2009

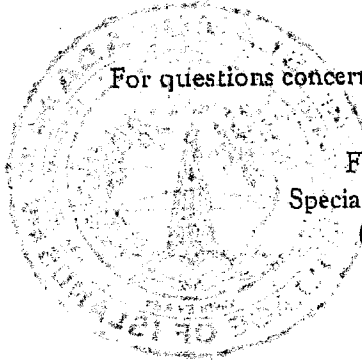


FLORIDA DEPARTMENT OF TRANSPORTATION

Federal Highway Administration
Emergency Relief Program

Local Governments that suffer serious damage on Federal-aid highways as a result of a natural disaster or catastrophic failures from an external cause may be eligible for Emergency Relief funds from FHWA. Emergency Relief funds are available for permanent repairs and emergency repairs.

For complete details on the ER Program, please refer to the Emergency Relief Manual. The electronic version may be accessed at www.fhwa.dot.gov/reports/erm/index.htm



For questions concerning "Permanent Repairs" contact:

FDOT
Special Projects Supervisor
(386) 943-5466

For questions concerning "Emergency Repairs" contact:

FDOT
JPA Coordinator
(386) 943-5452



Florida Department of Transportation

LOCAL GOVERNMENT CONTRACTING REQUIREMENTS
for the
FHWA Emergency Relief Program

- ✓ Federal-aid Requirements Must Be In Local Government Contracts
for Emergency Repairs and Permanent Repairs - Attached

(FHWA-1273, Davis-Bacon Wage Rates, Buy America, etc.)
Davis-Bacon does not apply to debris removal agreements

- ✓ Repair projects under the ER program must comply with the requirements
of the National Environmental Policy Act (NEPA)
- ✓ Negotiated contracts are allowed, but their use should be minimized
- ✓ Document how contracts are negotiated, solicited, or openly bid

Requirements cannot be waived

Contract Requirements for Emergency Relief Program Agreements

Agreements for emergency work that are entered into by Local Governments with third parties to perform Emergency Relief Program work for which the Local Government intends to seek reimbursement involving FHWA Emergency Relief Program funds, must comply with all Federal contract provision requirements outlined or referred to in 23 CFR Part 633A.

- a. Third party agreements must be negotiated, solicited or openly bid by the Local Government
- b. Include provisions mandating compliance with Davis-Bacon wage rates and include the wage rate tables in the agreement, said tables being available at: <http://www.dot.state.fl.us/construction/wage.htm>

Davis-Bacon does not apply to debris removal agreements.
- c. Include the "Required Contract Provisions for Federal-Aid Construction Contracts" (FHWA - 1273) a copy of which is attached hereto.
- d. Mandate compliance with Federal "Buy America Requirements", a copy which is attached hereto.
- e. Mandate coordination by the Local Government and the third party contractor with the Department to assure compliance with the requirements of the National Environment Policy Act (NEPA) of 1969.
- f. Mandate compliance with 49 CFR Part 26, Disadvantaged Business Enterprise Program, including the requirements for the Contractor and /or the Local Government to report monthly on the Equal Opportunity Reporting System on the Department's website found at www.bipincwebapps.com/bizwebflorida/.
- g. Mandate compliance with all requirements as imposed by the American with Disabilities Act of 1990 (ADA), the regulations of the Federal government issued thereunder, and assurance by the Local Government pursuant thereto.
- h. Mandate compliance with the convict labor prohibition in 23 U.S.C. 114. Convict labor cannot be used in Emergency Relief construction projects.

Environmental Considerations:

Repair projects under the ER program must comply with the requirements of the National Environmental Policy Act (NEPA) of 1969. Emergency repairs to restore essential travel, minimize the extent of damage, or protect remaining facilities are normally classified as categorical exclusions under 23 CFR 771.117(c)(9), as are ER projects to restore permanently the existing facility in-kind at the existing location, ref. 23 CFR Part 771.117(d).

However, if impacts to protected or otherwise sensitive or high-value resources are possible, advance coordination with the appropriate local, State, and Federal resource agencies should be closely considered to avoid or minimize project delays or shutdowns.

On occasion, an ER project that includes a betterment, whether or not eligible for ER funding, may require further NEPA review. Although on the surface a project may appear to qualify for a categorical exclusion, certain betterments may need either an environmental assessment (EA) to determine whether or not the project will cause significant environmental impacts, or an environmental impact statement (EIS) if significant impacts are predicted. This is illustrated by the following example:

Project Betterment Requiring Environmental Evaluation

When repairing a section of roadway inundated and seriously damaged by floodwaters, it was determined that a grade raise could be economically justified for ER funding. Raising the grade of the roadway will require small amounts of additional right-of-way from adjacent wetland areas. In addition, in future flood events, the higher roadway grade could impound additional water and flood other upstream areas. As a result of the project's potential impact on wetlands and future flooding patterns, further evaluation was necessary to determine the appropriate level of NEPA documentation.

The NEPA project development process provides the final Federal-aid highway project decision, occasionally including a facility on new location. As noted above, ER projects to construct replacement facilities may require environmental assessments or environmental impact statements, depending on the potential level of impacts to resources, the value of the resources, and what, if any, legal protections apply to the resources. However, even replacement facilities constructed at the existing location of the damaged facility may require extra environmental evaluation beyond that needed for a routine categorical exclusion. These situations are illustrated by the following examples:

Replacement at New Location

A roadway was permanently submerged by water backing up behind a naturally created dam, and it has been determined replacement of the inundated highway facility at its existing location is neither practical nor feasible, and various alternate locations may be available to relocate this section of highway. The NEPA process documents consideration of appropriate project alternatives and their potential impacts and determines that the preferred alternative is replacement of the old facility on a specific new location or site. Although a categorical exclusion can be used if circumstances merit, early environmental coordination may determine that an EA or an EIS is necessary to do this.

Replacement at Existing Location

An existing bridge over a river has been damaged beyond repair but can be replaced with a bridge of comparable width and length at the same location. However, this section of river contains critical habitat for a Federally listed endangered species, which would be seriously impacted during the scheduled construction period. As a result of this potential impact, the project decision could not be categorically excluded, and additional NEPA evaluation and documentation was necessary.

Required Contract Provisions Federal-Aid Construction Contracts

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Payment of Predetermined Minimum Wage
- V. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety; Accident Prevention
- IX. False Statements Concerning Highway Projects
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for Lobbying

Attachments

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;

Section IV, paragraphs 1, 2, 3, 4, and 7;

Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's