

INVITATION TO BID NO. (“ITB”): 17-18-022

**DOWNTOWN MIAMI SIGNAGE AND WAYFINDING SYSTEM**

OFFICE OF CAPITAL IMPROVEMENTS (“OCI”)  
PROJECT NO.: B-30941

**Advertisement Date:** April 25, 2018

**Bid Due Date:** May 28, 2018

**Bid Due Time:** 2:00 P.M. (**Local Time**)



**Mayor Francis Suarez**  
**Commissioner Wifredo “Willy” Gort, District 1**  
**Commissioner Ken Russell, District 2**  
**Commissioner Joe Carollo, District 3**  
**Commissioner Manolo Reyes, District 4**  
**Commissioner Keon Hardemon, District 5**  
**City Manager Emilio T. González, Ph.D.**

Issued By: Anthony Rolle  
City of Miami  
Department of Procurement  
444 SW 2nd Avenue, 6th Floor  
Miami, FL 33130

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## INVITATION TO BID NO.: 17-18-022

### NOTICE TO CONTRACTORS

Sealed bids will be received by the **City of Miami, Office of the City Clerk, City Hall, 1<sup>st</sup> Floor, 3500 Pan American Drive, Miami, Florida 33133-5504** for:

#### **Downtown Miami Signage and Wayfinding System**

**Bids Due: May 28, 2018 at 2:00 P.M.**

**Scope of Work:** The Work consists of furnishing all materials, labor, and equipment necessary for installation of new vehicular, pedestrian and parking wayfinding signage, and improvements to the public right-of-way, such as the removal of repetitive and aging signs, and the installation of district gateway and destination signs.

**BIDS SUBMITTED BY PROSPECTIVE CONTRACTORS WITHOUT 1) A VALID, CURRENT STATE OF FLORIDA GENERAL CONTRACTOR'S LICENSE AND 2) A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) PREQUALIFICATION WILL NOT BE CONSIDERED FOR AWARD.**

#### **Minimum Requirements as of Bid Due Date:**

1. **PRIME CONTRACTOR**: must hold a **current certified General Contractor license** from the State of Florida, **and be prequalified with FDOT**; and
2. **PRIME CONTRACTOR**: a minimum of five (5) years of experience under its current business name in the construction of roadway/horizontal projects involving public right-of-way, public utilities and maintenance of traffic, supported by **references for at least three (3) completed projects**. Reference Projects must demonstrate that the Prime Contractor: **i) served as the Prime Contractor for the Referenced Projects provided; and ii) self-performed at least thirty percent (30%) of the physical labor construction work for the referenced Projects (complete three (3) Reference Letters to certify – located on Page 100).** If the Work is phased, the self-performance percentage requirement will apply to each phase or segment of the Work – severally; and
3. **SUBCONTRACTOR**: **at least one (1) subcontractor MUST BE prequalified by FDOT for the “ROADWAY SIGNING” work classification**, with a minimum of five (5) years of experience under its current business name in the manufacture and/or installation of municipal signage and wayfinding systems, supported by **references for at least two (2) completed projects** (complete two (2) Reference Letters to certify – located on Page 100). Submitted reference projects must demonstrate that the Bidder: i) was the Primary ROADWAY SIGNING Contractor.

The selected Bidder, hereinafter referred to as “Contractor”, must self-perform at least thirty percent (30%) of the physical labor construction work for the Downtown Miami Signage and Wayfinding System project (the “Project”).

The Department of Procurement (Procurement) has scheduled a **VOLUNTARY PRE-BID CONFERENCE** to be held on the following date, time, and location:

**Location:** Miami Riverside Center  
444 SW 2<sup>nd</sup> Avenue, 6th Floor - South Conference Room  
Miami, Florida

**Date/Time:** May 1, 2018 at 3:00 P.M.

The provisions of FHWA-1273 and LAP Divisions 1 Specifications (Off-System) are hereby attached and made part of the Contract documents. All work associated with this Project must adhere to the terms and requirements of this Contract.

The Bid plans and other documents can be obtained by visiting the Office of Capital Improvements (OCI) webpage at <http://www.miamigov.com/MiamiCapital/NewBidsandProposals.html>.

**It is recommended that firms periodically check the OCI webpage for updates and the issuance of addenda. It is the sole responsibility of each Bidder to ensure their receipt and understanding of all addenda.**

All bids shall be submitted in accordance with the Instructions to Bidders in Section 1 – Instructions for Submission, and will consist of one (1) unbound original, signed and sealed, plus one (1) electronic copy in PDF on a CD or USB Drive, at the time, date and place above, where bids will be publicly opened. **Any bids received after the time and date specified will not be considered.** The responsibility for submitting a bid before the stated time and date is solely and strictly the responsibility of the Bidder. The City is not responsible for any delay no matter what the cause. You assume any risk of any delay or mistake. **BIDDER IS HEREBY ADVISED THAT THIS INVITATION TO BID IS SUBJECT TO THE "CONE OF SILENCE," IN ACCORDANCE WITH ORDINANCE NO. 12271 Section 18-74, CITY OF MIAMI CITY CODE, as amended.**

**Proposed Solicitation, Due Diligence and Award Schedule:** The chart below reflects the projected Solicitation, Due Diligence and Award Schedule for ITB 17-18-022 – Downtown Miami Signage and Wayfinding System – Project No.: B-30941. Dates reflected in this chart may be altered, if in the best interest of the City.

<b>Proposed Solicitation, Due Diligence and Award Schedule</b>		
1.	ITB Advertised to the Public	<b>April 25, 2018</b>
2.	Pre-Bid Conference	May 1, 2018
3.	Last Day to Submit RFIs to the City	May 8 2018
4.	Bids Due Date to the City	<b>May 28, 2018</b>
5.	Completion of Due Diligence Re: Lowest Responsive and Responsible Bidder	June 4, 2018
6.	Receive from FDOT Concurrence of Award to Lowest Responsive and Responsible Bidder	June 7, 2018
7.	Place Award of Contract on City Commission Agenda	<b>June 11, 2018</b>
8.	Receive Signature Pages, Corporate Resolutions and Payment Performance Bonds from Contractor	August 13, 2018
9.	Route for Contract for Execution by City Officials	August 16, 2018



## Section 1 – Instructions for Submission

### 1. Intention of City

It is the intention of City to describe in this Invitation to Bid (“ITB”) the Project(s) to be completed in accordance with all codes and regulations governing all the Work to be performed under this Contract(s). Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade meanings are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids and Contractor shall comply therewith. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

### 2. Scope of Work

The Work consists of furnishing all materials, labor, and equipment necessary for installation of new vehicular, pedestrian and parking wayfinding signage, and improvements to the public right-of-way, such as the removal of repetitive and aging signs, and the installation of district gateway and destination signs.

### 3. Location of Project(s)

**The Project includes various locations in and around Downtown Miami, Florida.**

### 4. Performance of the Work

Contractor shall self-perform (complete) at least thirty percent (30%) of Physical Construction Labor Work for the negotiated construction cost of the entire Project utilizing its own employees. The City reserves its right to require documentary confirmation of this requirement. By submitting a bid, the Bidder certifies that it shall utilize its own employees to meet this requirement. As part of the bid, the Bidder must include the form titled “Questionnaire”. Failure to complete and submit this form, or to meet this requirement, shall result in the bid being deemed non-responsive. Where the City determines that Contractor is deemed as not meeting this requirement during the performance of the Work, then the Contractor shall be in default of the Contract. If the Work is Phased, Segmented or done in increments, the thirty percent (30%) self-performance requirement shall apply to each segment or increment – jointly and severally.

### 5. Examination of Contract Documents and Site

It is the responsibility of each Bidder, before submitting a response to this ITB to:

- a. Carefully review the ITB, including any addenda and notify the City of all conflicts, errors or discrepancies.
- b. Visit the site(s) or structure(s) to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work.
- c. Take into account federal, state and local (City and Miami-Dade County including, without limitation the City Purchasing Ordinance and Florida Building Code) laws, regulations, ordinances that may affect a Bidder’s ability to perform the Work.
- d. Study and carefully correlate Bidder's observations with the requirements of the ITB.
- e. Sign and return all required ITB forms and/or addenda, as applicable.

The submission of a Bid in response to this solicitation shall constitute an incontrovertible representation by Bidder that it will comply with the requirements of the Contract Documents and that without exception, the response is premised upon performing and furnishing Work required under the Contract Documents and that the Contract Documents are sufficient in

detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6. **Addenda**

Only questions answered via written Addendum will be binding. Oral and other interpretations or clarifications will be without legal binding effect and should not be relied upon in preparation of a Bid response. All questions about the meaning or intent of the Contract Documents are to be directed to the City's Department of Procurement (Procurement) in writing, to the attention of Anthony Rolle at [arolle@miamigov.com](mailto:arolle@miamigov.com), with a copy to the City Clerk at [clerks@miamigov.com](mailto:clerks@miamigov.com). Interpretations or clarifications considered necessary by Procurement in response to such questions will be issued by the City by means of an Addendum. All Addenda will be posted on the OCI webpage. **Written questions must be received by May 8, 2018 at 5:00 PM.**

7. **Bid Submission**

All Bids must be received by the City of Miami, City Clerk's office located at City Hall, First Floor, 3500 Pan American Drive, Miami, FL 33133, before the time and date specified for Bid opening, enclosed in a sealed envelope, legibly marked on the outside:

**ITB NO.: 17-18-022**

**BIDS FOR: Downtown Miami Signage and Wayfinding System**

Bidders must submit **one (1) original Bid Packages and one electronic Bid Package on a CD or USB Drive in PDF format.** Failure to submit one (1) original will result in the Bid being deemed non-responsive.

8. **Bid Guaranty**

All bids shall be accompanied by either an original Bid Bond executed by a surety meeting the requirements of the City, or by cash, money order, certified check, cashier's check, Unconditional/Irrevocable Letter of Credit, Bid Bond Voucher (for Projects less than two hundred thousand dollars (\$200,000)) issued to City of Miami by certified check, treasurer's check or bank draft of any national or state bank (United States), in the amount of five percent (5%) of the total bid amount (payable to City), and conditioned upon Contractor executing the Contract and providing the required Performance and Payment Bond and evidence of required insurance within fifteen (15) calendar days after notification of award of the Contract. The time for execution of the Contract and provision of the Performance Bond, Payment Bond and Certificate(s) of Insurance may be extended by OCI at its sole and absolute discretion. Bid Securities of the unsuccessful Bidders will be returned after award of Contract. A PERSONAL CHECK OR A COMPANY CHECK OF A BIDDER SHALL NOT BE DEEMED A VALID BID SECURITY. Security of the Contractor shall be forfeited to the City as liquidated damages and not as a penalty, for the cost and expense incurred should said Contractor fail to execute the Contract, and provide the required Performance Bond and Payment Bond. Any form of Bid Guaranty shall be in a form acceptable to the City's Risk Management Administrator and the City Attorney, as to legal form.

9. **Preparation of Bid**

All Bids must be made upon the blank City and FDOT forms provided herein. The Bid must be signed and acknowledged by the Bidder in accordance with the directions on the ITB. Failure to utilize the City's forms, or fully complete said forms may result in a determination that the Bid is non-responsive.

The Bidder will be considered non-responsive if it is conditioned on modifications, changes, or revisions to the terms and conditions of the ITB.

The Bid is to include the furnishing of all labor, materials, overhead expense and profit, equipment including, but not limited to, tools, services, permit fees, applicable taxes, overhead and profit for the completion of the Work except as may be otherwise expressly provided in the Contract Documents.

Joint venture firms must complete and submit with their Bid the form titled "Information for Determining Joint Venture Eligibility", (Form A) and submit a copy of the formal agreement between all joint-venture parties. This joint venture agreement must indicate their respective roles, responsibilities, and levels of participation for the Project. Failure to timely submit Form A, along with an attached written copy of the joint venture agreement may result in disqualification of the Bid. All joint venture firms must meet the requirements stipulated in the Florida Statutes.

**10. Pre-Bid Conference**

**A VOLUNTARY PRE-BID CONFERENCE will be held on MAY 1, 2018 AT 3:00 P.M. AT THE MIAMI RIVERSIDE CENTER, 6<sup>TH</sup> FLOOR SOUTH CONFERENCE ROOM, 444 SW 2<sup>ND</sup> AVENUE, MIAMI, FL 33130**, to discuss this ITB. Since space is limited, it is recommended that one representative of each firm attend in order to become familiar with the ITB and conditions of usage. Attendees are requested to bring this ITB Package to the conference.

**11. Postponement of Bid Opening Date**

The City reserves the right to postpone the date for receipt and opening of submissions through issuance of addenda and will make a reasonable effort to provide prospective Bidders at least five (5) calendar days' notice of any such postponement.

**12. Acceptance or Rejection of Bids; Waiver of Technicalities, etc.**

The City reserves the right to reject any or all Bids prior to award for any reason or to re-advertise for bids for any reason.

The City reserves the right to waive any minor technicality, informality, variance, deviation, omission or the like up to or prior to award of the Contract.

Reasonable efforts will be made to either award the Contract or reject all Bids within ninety (90) calendar days after Bid opening date. A Bidder may not withdraw its Bid unilaterally nor change the Price before the expiration of one hundred eighty (180) calendar days from the date of Bid opening. A Bidder may withdraw its Bid after the expiration of one hundred eighty (180) calendar days from the date of Bid opening by delivering written notice of withdrawal to OCI prior to award of the Contract by the City Commission.

**13. Environmental Regulations**

The City reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination in the opinion of the City. Bidder shall submit with its Bid, a complete history of all citations and/or violations, notices and dispositions thereof. The failure to submit any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidders shall notify the City immediately upon receipt of any notice of any such citation or violation which Bidder may receive after the submittal opening date and during performance of the Work under this Contract.

**14. Bid Award**

**The City shall award the Contract for this Project to the lowest responsive and responsible Bidder based on the Total Bid Construction Cost.**

The City may require demonstration of competency and, at its sole discretion, conduct site visits, require the Bidder to furnish documentation and/or require the Contractor to attend a meeting to determine the Bidder's qualifications and ability to meet the terms and conditions of this Contract. The City shall consider, but not be limited to, such factors as financial capability, labor force, equipment, experience, knowledge of the trade work to be performed, the quantity of Work being performed by the Contractor and past performance on City projects.

The Bidder must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that it can satisfactorily provide the goods and/or services required herein.

The City, in its sole discretion, may determine a Bidder to be non-responsible where the Bidder has failed to perform in accordance with the terms of any other contracts with the City, past or current, or any other contracts with any other public entity or any other contract for construction services with any other public or private business entity in which the Bidder has been declared in default.

Any Bidder who at the time of submission is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder, under federal bankruptcy law or any state insolvency, the Bidder may be declared non-responsive.

Any Bidder who has filed a lawsuit against the City or where the City has filed a lawsuit or won a court judgment against a Bidder, such Bidder may be declared non-responsible.

**15. Bid Protest**

Any actual or prospective contractual party who feels aggrieved in connection with the solicitation or award of a contract may protest in writing to the Chief Procurement Officer, in accordance with the procedures contained in Section 18-104, Resolution of Protested Solicitations and Awards, as amended, of the City Code, Ordinance No. 12271 (the City of Miami Procurement Code) describing the protest procedures. Protests failing to meet the requirements for filing shall **NOT** be accepted. Failure of a party to timely file shall constitute a forfeiture of such party's right to file a protest. **NO EXCEPTIONS TO THIS REQUIREMENT.**

**16. Small and Disadvantaged Firm Participation**

1) The City of Miami shall comply with Florida Department of Transportation's ("FDOT") Disadvantaged Business Enterprise program plan for federally funded work. FDOT and City of Miami currently have a race neutral program with a 10.65% goal as certified under the Florida Unified Certification Program. The detailed DBE program information contained in the DBE Program attachment at page 101 and incorporated herein. The undersigned Contractor agrees to comply with all applicable requirements stipulated therein. The Anticipated DBE Participation Statement must be included with your bid.

2) The City encourages Contractors to secure the participation of small businesses and/or Disadvantaged Business Enterprises (DBE) that are currently registered with and/or certified by other governmental agencies such as under programs in effect for the Florida Department of Transportation ("FDOT"), Miami-Dade or Broward Counties, and the Miami Dade County Public Schools.

3) No participant may discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program. The recipient shall take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

4) Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part

26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

5) The Contractor, Sub-recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract.

6) Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

**17. State and Local Preferences**

For the purpose of Federal-aid construction projects and pursuant to 23 CFR 635.117, 23 CFR 635.409, 49 CFR 30 and 255.0991 F.S., the City of Miami shall not utilize or impose any procedures or requirements which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States. **THERE SHALL BE NO LOCAL HIRING PREFERENCES UNDER THIS CONTRACT. THE CITY IS HEREBY PROHIBITED FROM ENFORCING ITS LOCAL PREFERENCE ORDINANCES FOR PARTICIPANTS OF THE CITY TRAINING AND EMPLOYMENT PROGRAMS, AND OTHER RESIDENTS OF THE CITY.**

Bidders shall not be required to identify opportunities to hire qualified City residents if a Contract is awarded, and are not expected to secure the cooperation of Subcontractors in this effort. Applicants will not be permitted to receive special consideration, and must meet all hiring requirements normally imposed by the employer.

No requirement shall be imposed and no procedure shall be enforced by any State transportation department in connection with a project which may operate:

(a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or

(b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

**18. Subcontractor and Small Business Participation Reporting**

The City is collecting data on the participation of local small business. Based on this ongoing effort the City requires that with the submission of the first payment requisition the Contractor shall submit a report, using the OCI form available on its CIP web page, on the use of Subcontractors. Such report shall include information on local and small business participation. Failure to submit the report may delay the issuance of payment to the Contractor. Contractor shall submit an updated report when a Subcontractor has been added or changed.

**19. Cone of Silence**

Pursuant to Section 18-74 of the City's Procurement Code, a codification of Miami Ordinance No. 12271, a "Cone of Silence" is imposed upon this ITB after advertisement and terminates at the time the City Manager issues a written recommendation to the Miami City Commission. The Cone of Silence prohibits any verbal communications regarding this ITB.

Any communication concerning this ITB must be submitted in writing to Procurement at [arolle@miamigov.com](mailto:arolle@miamigov.com). Bidders must also file a copy of such written communications with the Office of the City Clerk. Written communications may be in the form of e-mail, with a copy to the Office of the City Clerk at [clerks@miamigov.com](mailto:clerks@miamigov.com).

This language is only an overview of the requirements of the Cone of Silence. Please review Section 18-74 of the City's Procurement Code for a complete and thorough description of the Cone of Silence. You may also contact the City Clerk at (305) 250-5360, to obtain a copy.

**20. Public Entity Crime**

Any person, individual, corporation, entity, or affiliate who has been placed on the convicted Bidder list following a conviction for a public entity crime may not submit a Bid on a contract to provide any goods or services to a public entity, may not submit a submittal on a contract with a public entity for the construction or repair of a public building or public works project, may not submit a response on a lease of real property to a public entity, may not be awarded or perform work as a contractor, supplier, Subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of Florida Statutes for Category Two for a period of 36 months from the date of being placed on the convicted Bidder list.

**21. Fraud and Misrepresentation**

Any person, individual, corporation, entity, or affiliate that attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years in accordance with the applicable provisions of the City Code. The City as a further sanction may terminate or cancel any other contracts with such individual, corporation or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation.

**22. Title VI/Nondiscrimination Program - Policy Statement**

It is the policy of the Florida Department of Transportation, under **Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; Section 324 of the Federal-Aid Highway Act of 1973; Civil Rights Restoration Act of 1987;** and related statutes and regulations, that no person in the United States shall, on the basis of race, color, national origin, sex, age, disability/handicap, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any federally or non-federally funded program or activity administered by the Department or its sub-recipients. To comply with this policy, civil rights and program area specialists must work closely to carry out their mutual nondiscrimination program responsibilities. Each Assistant Secretary, District Secretary, Florida's Turnpike Enterprise Executive Director, Director, Manager, and Section Head of the Department's major program areas (Planning, Project Development/Environmental, Design, Right-of-Way, Construction, Maintenance, Public Transportation, and Research), as well as the Department's sub-recipients, will be responsible for making a good faith effort to ensure that this policy is carried out in their respective program areas. The authority to develop, maintain, implement, and monitor this policy is delegated to the Equal Opportunity Office Manager.

**23. Collusion**

Where two (2) or more related parties, as defined in this Article, each submit a response to an ITB, such submissions shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submission under such ITB. Related parties shall mean employees, officers or the principals thereof which have a direct or indirect ownership interest in another firm or in which a parent company or the principals thereof of one Contractor have a direct or indirect ownership interest in another Contractor for the same project(s). ITB responses found to be collusive shall be rejected.

**24. Contractor in Arrears or Default**

The Contractor represents and warrants that the Contractor is not in arrears to the City and is not a defaulter as a surety or otherwise upon any obligation to the City. In addition, the

Contractor warrants that the Contractor has not been declared “not responsible” or “disqualified” by or debarred from doing business with any state or local government entity in the State of Florida, the Federal Government or any other State/local governmental entity in the United States of America, nor is there any proceeding pending pertaining to the Contractor’s responsibility or qualification to receive public agreements. The Contractor considers this warrant as stated in this Article to be a continual obligation and shall inform the City of any change during the term of the Contract.

The City shall not consider and will deem as non-responsible Bids submitted by Bidders where the City has determined that the Bidder is in monetary arrears to the City or otherwise in debt or default to the City at the time and date Bids are due.

**25. Cancellation of Solicitation**

The City reserves the right to cancel, in whole or in part, any solicitation when it is in the best interest of the City. This determination will be at the discretion of the City and there will be no recourse from such cancellation.

## **Section 2 – General Terms and Conditions**

### **1. Definitions**

**Architect of Record (AOR)** means a designation reserved, usually by law, for a person or organization professionally qualified and licensed in the State of Florida to perform architectural services.

**Basis of Design** means a specific manufacturer's product that is named, including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

**Bid** means the response submitted by a bidder to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Contract Documents at the time of submittal.

**Bidder** means any individual, firm, incorporated or unincorporated business entity, or corporation tendering a submittal, acting directly or through a duly authorized representative.

**Change Order** means a written document ordering a change in the Contract Price or Contract Time or a material change in the Work. A change order must comply with the Contract Documents.

**City** means the City of Miami, Florida, a Florida municipal corporation. In all respects hereunder, City's performance is pursuant to the City's capacity as Owner. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to the City as a party to this Contract. For the purposes of this Contract, "City" without modification shall mean the City Manager or Director, as applicable.

**City Commission** means the legislative body of the City.

**City Manager** means the duly appointed chief administrative officer of the City of Miami.

**Construction Change Directive** means a written directive to effect changes to the Work, issued by the Consultant or the Director that may affect the ITB Contract price or time.

**Construction Engineering Inspection (CEI)** means an individual or an organization (assigned by the Director of OCI) responsible in assisting the City's Project and Construction Managers in Contract administration, site inspections, material sampling and Project close-out.

**Construction Manager (CM)** means an individual or organization assigned by the Director of OCI whose duties include reviewing Project documents during the design phase and managing the construction phase that include, but not limited to, directing and coordinating construction activities associated with the Project.

**Construction Schedule** means a critical path schedule or other construction schedule, as defined and required by the Contract Documents.

**Consultant** means a firm that has entered into a separate agreement with the City for the provision of design/engineering services for a Project; and if applicable, means the Architect or Engineer of Record Contracted by the City to prepare the plans and specifications for the Projects. Consultant may also be referred to as Architect or Engineer of Record.

**Contract** means the Invitation to Bid (ITB) solicitation and the Bid documents that have been executed by the Bidder and the City subsequent to approval of award by the City.



**Contract Documents** mean the Contract as may be amended from time to time, the plans and drawing, all addenda, clarifications, directives, change orders, payments and other such documents issued under or relating to the Project.

**Contractor** means the person, firm, or corporation with whom the City has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to any Work issued under this Contract through the award of an ITB.

**Cure** means the action taken by the Contractor promptly after receipt of written notice from the City of a breach of the Contract Documents which shall be performed at no cost to the City, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project(s) site(s) disturbed in performing such cure.

**Cure Period** means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written Notice to Cure from the City identifying the deficiencies and the time to Cure.

**The Davis–Bacon Act** – is now codified as 40 U.S.C. 3141-3148. The Act covers four main areas of construction: residential, heavy, buildings, and highway. Within these areas are further classifications, including craft positions such as plumber, carpenter, cement mason/concrete finisher, electrician, insulator, laborer, lather, painter, power equipment operator, roofer, sheet metal worker, truck driver, and welder. An up-to date wage rate can be found on <https://www.wdol.gov/dba.aspx>

**Department** means or refers to the City of Miami’s Office of Capital Improvements (“OCI”) formerly known as Capital Improvements and Transportation Program (“CITP”).

**Design Documents** means the construction plans and specifications included as part of this Bid prepared by the Consultant for this Project(s) under a separate Agreement with the City.

**Director** means the Director of the Capital Improvements Program or designee, who has the authority and responsibility for managing the Project(s) under this Agreement.

**Drawings** means the graphic and pictorial portions of the Work, which serve to show the design, location and dimensions of the Work to be performed, including, without limitation, all notes, schedules and legends on such Drawings.

**Engineer** in this document shall also be referred to as the Project Manager and applies to LAP DIVISION 1 SPECIFICATIONS (OFF-SYSTEM) (REV 9-23-16) (1-17) Construction Checklist Specifications from Florida Department of Transportation Standard Specifications for Road and Bridge Construction

**Engineer of Record (EOR)** also referred to as consultant, a designation reserved, usually by law, for a person or organization professionally qualified and licensed in the State of Florida to perform engineering services.

**Field Directive** means a written approval for the Contractor to proceed with Work requested by the City or the Project Manager, which is minor in nature and typically should not involve additional cost.

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work in accordance with the Agreement as certified by the City and submitted all documentation required by the Contract Documents.

**Guaranteed Maximum Cost** means the sum established by these Contract Documents as the maximum cost to the City of performing the specified Work on the basis of the cost of labor and materials plus overhead expenses and profit.

**Inspector** means an authorized representative of the City (an employee or consultant designated by the Director) assigned to make necessary inspections of materials furnished by Contractor and of the Work performed by Contractor.

**Materials** mean goods or equipment incorporated in a Project(s), or used or consumed in the performance of the Work.

**Notice of Award** means the written letter to the Contractor notify the Contractor that they have been awarded the Contract.

**Notice to Proceed** means a written letter or directive issued by the Director or designee acknowledging that all conditions precedent have been met and directing that the Contractor may begin Work on the Project(s).

**Physical Construction Labor Work** means the completed construction services required by the Contract Documents, completed through the use of the Contractor's own employees and excluding all materials, supplies, and equipment incorporated or to be incorporated in such construction.

**Plans and/or Drawings** means the official graphic representations of a Project(s).

**Project or Work** as used herein refers to all reasonably necessary and inferable construction and services required by the Contract Documents whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations, including completion of the construction in accordance with the Drawings and Specifications. The Work may constitute the whole or a part of the Project(s).

**Project Manager (PM)** means a City employee (assigned by the Director of OCI) to manage Project that may include but not limited to coordination of design, procurement and construction activities; assigning management tasks to EOR, CM or CEI (hereby known as designee), establish lines of communication and responsibilities to ensure that the Project is completed in a timely manner.

**Request for Information (RFI)** means a request from the Contractor seeking an interpretation or clarification relative to the Contract Documents. The RFI, which shall be clearly marked RFI, shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is needed. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.

**Risk Administrator** means the City's Risk Management Administrator, or designee, or the individual named by the City Manager to administer matters relating to insurance and risk of loss for the City.

**Specifications** mean all of the definitions, instructions, descriptions, directions, requirements, provisions and standards (and all written supplements thereto) pertaining to the methods, (or manner) of performing and actual performance of the Work, or quantities and quality of accepted materials to be furnished under the Contract Documents.

**Subcontractor** means a person, firm or corporation having a direct contract with Contractor including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes Materials not so worked.

**Substantial Completion** means that point at which the Work is at a level of completion in substantial compliance with the Agreement such that the City can use, occupy and/or operate the facility in all respects to its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, which regulate or have jurisdiction over the Work, have inspected, and approved the Work. Beneficial use or occupancy shall

not be the sole determining factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of occupancy has been issued.

## **2. Time is of the Essence**

Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract Documents.

All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the City.

Contractor acknowledges and recognizes that the City is entitled to full and beneficial occupancy and use of the completed Project following expiration of the Contract Time.

In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with Section 2, General Terms and Conditions, Article 72, Excusable Delay, Non-Compensable, the Contractor understands that, except and only to the extent provided otherwise in the Contract Documents, the occurrence of events of delay within the Contractor's control, the Work shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Contract Documents Time, and shall not entitle the Contractor to an adjustment. All parties under the control or contract with the Contractor shall include but are not limited to material person, Subcontractors, suppliers, and laborers.

The Contractor acknowledges that the City is purchasing the right to have the Contractor continuously working at the Project(s) site(s) for the full duration of the Project(s) to ensure the timely completion of the Work.

## **3. Contract Term**

The Contract shall commence upon issuance of the Notice of Proceed, which shall be issued subsequent to the execution of the Contract by the City. The Contract shall terminate upon notice by the City that the Contract has been closed-out after final completion or otherwise terminated by the City pursuant to the terms and conditions herein set forth. The total bid amount shall be the Guaranteed Maximum Cost ("GMC") of the Project which means the maximum cost of the work including labor, materials, equipment, overhead expenses and profit. The City will not be liable for payment of any amount in excess of the GMC (unless, the City Commission has approved a project contingency or has approved a prior amendment to the Contract, setting forth an additional amount due to Owner requested changes or its equivalent. If the term Guaranteed Maximum Price ("GMP") is used in this Agreement, it shall have the same definition as GMC, defined above.

## **4. Notices**

Whenever either party desires to give written notice unto the other relating to the Contract, such must be addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

**For City of Miami:**

**Emilio T. González, Ph.D.**

**City Manager**

City of Miami

444 SW 2<sup>nd</sup> Avenue - 10<sup>th</sup> Floor

Miami, Florida 33130

[ETGonzalez@miamigov.com](mailto:ETGonzalez@miamigov.com)

(305) 416-1025

**Annie Perez, CPPO**

**Director**

**Department of Procurement**

City of Miami

444 S.W. 2nd Avenue, - 6th Floor

Miami, Florida 33130

[AnniePerez@miamigov.com](mailto:AnniePerez@miamigov.com)

(305) 416-1910

**Steven C. Williamson**

**Director**

**Office of Capital Improvements**

City of Miami

444 S.W. 2<sup>nd</sup> Avenue, - 8<sup>th</sup> Floor

Miami, Florida 33130

[SWilliamson@miamigov.com](mailto:SWilliamson@miamigov.com)

(305) 416-1225

**For Contractor:**

**TBD**

During the Work the Contractor shall maintain continuing communications with the Project Manager. The Contractor shall keep the City fully informed as to the progress of the Project(s) at all times through ongoing communications with the Project Manager.

The Contractor shall notify the Miami Police Department and Fire Department about the construction schedule(s). Prior to Construction, the Contractor is required to obtain a current list of contact persons and phone numbers from Collin Worth at (305) 416-1022 or via email at [CWorth@miamigov.com](mailto:CWorth@miamigov.com), the City of Miami's Project Manager for this Project.

The Contractor must notify residents living within five-hundred (500) feet of the Project in writing as least one week in advance prior to commencing work in the general area

**5. Priority of Provisions**

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract Documents by reference and a term, statement, requirement, the specifications and plans prepared by the Consultant, or provision of the Contract Documents the following order of precedence shall apply:

In the event of conflicts in the Contract Documents the priorities stated below shall govern;

1. FHWA-1273 / Required Contract Provisions for Federal-Aid Construction Contracts

2. LAP Division I Specifications (Off-System)
3. Revisions and Change Orders to the Contract shall govern over the Contract
4. The Contract Documents shall govern over the Contract
5. Addendum to an ITB shall govern over the ITB
6. Scope of Work and Specifications shall govern over plans and drawings
7. Schedules, when identified as such, shall govern over all other portions of the plans
8. Specific notes shall govern over all other notes, and all other portions of the plans, unless specifically stated otherwise
9. Larger scale drawings shall govern over smaller scale drawings
10. Figured or numerical dimensions shall govern over dimensions obtained by scaling
11. Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern

## **6. Indemnification**

Contractor shall indemnify, save, defend (at its own cost and expense) and hold harmless City, its officers, agents, directors, and employees, from all liabilities, damages, losses, judgments, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, negligent act or omission, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. Contractor shall, further, hold the City, its officials and employees, harmless for, and defend the City, its officials and/or employees against, any civil actions, statutory or similar claims, injuries or damages arising or resulting from the permitted work, even if it is alleged that the City, its officials and/or employees were negligent. These indemnifications shall survive the cancellation and the term of this Contract. In the event that any action or proceeding is brought against City by reason of any such claim or demand, Contractor shall, upon written notice from City, resist and defend such action or proceeding by counsel satisfactory to City. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

To the fullest extent permitted by law, the Contractor shall indemnify, save, defend (at its own cost and expense) and hold harmless the City, the State of Florida, FDOT, and their respective officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract. Nothing contained in this paragraph is intended to, nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

The indemnifications provided above shall obligate Contractor to defend, at its own expense, to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description which may be brought against City, the State of Florida or FDOT, whether performed by Contractor, or persons employed or utilized by Contractor.

These indemnities shall survive the cancellation or expiration of the Contract. These indemnities shall be interpreted under the laws of the State of Florida, including without limitation and interpretation, which conforms to the limitations of §725.06 and/or §725.08, Florida Statutes as applicable.

Contractor shall require all Subcontractor agreements to include a provision that they shall indemnify the City, the State of Florida, FDOT, and its officers and employees.

The Contractor agrees and recognizes that the City, the State of Florida, FDOT, and its officers and employees shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the City or FDOT participated either

through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the City and FDOT in no way assume or share any responsibility or liability of the Contractor or Subcontractor, under this Agreement.

Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this Indemnification, the receipt and sufficiency of which is acknowledged by the Contractor.

## **7. Insurance**

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, pay for, and maintain in force until all of its Work to be performed under this Contract has been completed and accepted by City (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein.

**7.1. Workers' Compensation** insurance is to apply for all employees in compliance with the Statutory "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

- Waiver of subrogation
- Statutory State of Florida
- Limits of Liability

**7.2. Employers' Liability** with a limit of **One Million Dollars (\$1,000,000)** Dollars each bodily injury caused by an accident, each accident. **One Million Dollars (\$1,000,000)** Dollars each bodily injury caused by disease, each employee. **One Million Dollars (\$1,000,000)** Dollars each bodily injury caused by disease, policy limit.

**7.3. Commercial General Liability (CGL) (Primary & Non Contributory)** with minimum limits of **One Million Dollars (\$1,000,000)** each occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, with a general aggregate limit of **Two Million Dollars (\$2,000,000)**. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Products and/or Completed Operations for contracts with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per project. Contractor shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
- Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
- CGL Required Endorsements
  - Contingent Liability/Independent Contractors Coverage
  - Contractual Liability
  - Waver of Subrogation
  - Premises and/or Operations
  - Explosion, Collapse and Underground Hazards
  - Loading and Unloading

City is to be expressly included as an **Additional Insured** pursuant to endorsement number CG 2010 11/85 or its equivalence.

**7.4. Business Automobile Liability** with minimum limits of **One Million Dollars (\$1,000,000)** per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Auto/All Owned Autos/Scheduled.
- Hired, Borrowed, and Non-Owned Vehicles.
- Employers' Non-Ownership.
- Employees included as insured
- City of Miami as Additional Insured

**7.5. Umbrella Policy**

A. Limits of Liability	
Bodily Injury and Property Damage Liability	
Each Occurrence	<b>\$2,000,000</b>
Aggregate	<b>\$2,000,000</b>

City of Miami listed as an additional insured  
Excess Follow Form over all applicable liability policies contained herein

**7.6. Builder's Risk/Installation Floater**

Causes of Loss: All Risk of Direct Physical Damage or Loss  
Valuation: Replacement Cost  
Deductibles: 5% Wind, Hail, and Flood, \$25,000 AOP  
Coverage Extensions included  
City of Miami listed as an additional insured and loss payee

**7.7. Owners & Contractor's Protective**

- Each Occurrence **\$1,000,000**
- General Aggregate **\$1,000,000**

The above policies shall provide the City with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change. If the initial insurance expires prior to the completion of the Work, renewal copies of policies shall be furnished at least thirty (30) days prior to the date of their expiration.

Notice of Cancellation and/or Restriction--The policy(ies) must be endorsed to provide the City with at least thirty (30) days' notice of cancellation and/or restriction.

Contractor shall furnish to OCI the Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.

The official title of the Owner is the City of Miami, Florida. This official title shall be used in all insurance documentation.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

The Risk Administrator or his/her authorized designee reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Contractor in accordance with Section 2, General Terms and Conditions, Article 4, Notices. Contractor shall comply with such requests unless the insurance coverage is not then readily available in the national market. An additive or deductive change order will be issued to adjust the contract value as necessary. For insurance bonding issues and decisions, the City shall act through its Risk Administrator (unless otherwise stated).

## **8. Performance and Payment Bond**

Where required by the Contract Documents, the Contractor shall within fifteen (15) calendar days of being notified of award, furnish a Performance/Payment Bond ("Bond") containing all the provisions of the attached Performance/Payment forms.

Each Bond shall be in the amount of one hundred percent (100%) of the Contract value guaranteeing to City the completion and performance of the Work covered in the Contract Documents as well as full payment of all suppliers, laborers, or Subcontractors employed pursuant to this Project(s). Each Bond shall be with a Surety, which is qualified pursuant to Section 2, General Terms and Conditions, Article 9, Qualification of Surety.

Each Bond shall continue in effect for one year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract value, or an additional bond shall be conditioned that Contractor will, upon notification by City, correct any defective or faulty work or materials which appear within one year after Final Completion of the Project(s).

The City must be listed as an Obligee.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as amended from time to time, Contractor shall ensure that the Bond(s) referenced above shall be recorded in the public records and provide City with evidence of such recording.

Alternate Form of Security:

In lieu of a Performance/Payment Bond, Contractor may furnish alternate forms of security, subject to the requirements of § 18-98, City Code, which may be in the form of cash, money order, certified check, cashier's check or unconditional letter of credit in the form attached. Such alternate forms of security shall be subject to the prior approval of City and for same purpose, and shall be subject to the same conditions as those applicable above and shall be held by City for one year after completion and acceptance of the Work.

## **9. Qualification of Surety**

Bid Bonds, Performance/Payment Bonds over Two Hundred Thousand Dollars (\$200,000):

Each Bond must be executed by a surety company rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval. The surety company must be of recognized standing, authorized



to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

The Surety shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner

## **10. General Requirements**

The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not employee(s) or agent(s) of the City, or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of a Project a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Project Manager, should the Project Manager make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor shall perform the work complete, in place, and ready for continuous service, and shall include repairs, testing, permits, clean-up, replacements, and restoration required as a result of damages caused during this construction.

The Contractor represents that its personnel and Subcontractors have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Work, in a competent and professional manner.

The Contractor shall provide temporary facilities and controls necessary to perform the Work and to ensure safe and proper access and use of the site by the Project Manager. The Contractor shall at all times cooperate with the City, or the Project Manager and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The City, the Project Manager, or City representative, shall have full access to the Project(s) site(s) at all times.

The Contractor shall be responsible for the good condition of the Work or materials until formal release from his obligations under the terms of the Contract Documents.

All newly constructed work shall be carefully protected from injury in any way. No wheeling or walking or placing of heavy loads on it shall be allowed and the Contractor at its own expense shall reconstruct all portions damaged.

Contractor shall bear all losses incurred on account of the amount or character of the Work, or the character of the ground, being different from what he anticipated.

The Contractor shall at all times conduct the Work in such manner and in such sequence as will ensure the least practicable local interference. Contractor shall not open up Work to the prejudice of Work already started, and the Project Manager may require the Contractor to finish a section on which Work is in progress before Work is started on any additional section.

Contractor is to take necessary precautions and use caution when working in or around overhead transmission lines and underground utilities.

Contractor is responsible to control dust and prevent it from becoming a public nuisance or causing off-site damage. Contractor shall take all necessary and prudent measure to control dust.

**11. Method of Performing the Work**

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work, and interpretation of the Contract Documents shall be made upon that basis.

When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Contractor's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence.

If the Project Manager reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project Manager, the Project Manager shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project(s) within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the City. (3) The City at its sole option may also have Work performed by a third party contractor and deduct such cost from any monies due the Contractor.

Where materials are transported in the performance of the Work, vehicles shall not be loaded beyond the capacity recommended by the vehicle manufacturer or permitted by Federal, State or local law(s). When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged curbing, grass areas, sidewalks or other areas shall be repaired at the expense of the Contractor to the satisfaction of the Project Manager.

The Contractor shall furnish to the Project Manager a complete listing of 24-hour telephone numbers at which responsible representatives of the Contractor and all of the Contractor's Subcontractor can be reached should the need arise at any time.

**12. Work Staging and Phasing**

The Work to be performed shall be done in such a manner so as not to interfere with the normal City operations of the Project site or facility. The manner in which the Work is performed shall be subject to the approval of the Project Manager, whom if necessary, shall have the authority to require changes in the manner in which the Work is performed. There shall be no obstruction of City services without the prior written approval of the Project Manager. All requests for such interruption or obstruction must be given in writing to the Project Manager 24 hours in advance of the interruption of City operations.

The Contractor shall familiarize itself with normal City operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager.

A staging plan must be submitted to and approved by the Project Manager prior to the start of construction and issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

**13. Site Investigation and Representation**

The Contractor acknowledges that it has satisfied itself as to the nature and location(s) of the Work under the Contract Documents, the general and local conditions, particularly those

bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on City provided reports, the type of equipment and facilities needed preliminary to and during the performance of the Work and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

The Contractor further acknowledges that it has satisfied itself based on any geotechnical reports the City may provide and inspection of the Project(s) site(s) as to the character, quality, and quantity of surface and subsurface materials to be encountered from inspecting the site and from evaluating information derived from exploratory work that may have been done by the City or included in this Contract Documents.

Contractor should examine the soil conditions at the Project site to determine if any special shoring, sheeting, or other procedures necessary to protect adjacent property during excavation of subsoil materials or during filling of any area(s), or for any operation that may be required during the performance of the Work.

Any failure by the Contractor to acquaint itself with all the provided information and information obtained by visiting the Project(s) site(s) will not relieve Contractor from responsibility for properly estimating the difficulty or cost thereof under the Contract Documents. In the event that the actual subsurface conditions vary from the actual City provided reports the Contractor shall notify the City and this Contract Documents amount may be adjusted up or down depending on the conditions.

**14. Contractor to Check Plans, Specifications and Data**

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Project Manager as part of a Contract Documents, and shall notify the Project Manager of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished the Project Manager. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager.

**15. Contractor's Responsibility for Damages and Accidents**

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by City, and shall promptly repair or replace, at no additional cost to the City any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by City, and shall promptly repair or replace, at no additional cost to the City, and to the satisfaction of the Project Manager, any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

Lawn Areas - All lawn areas disturbed by construction shall be replaced with like kind to a condition similar or equal to that existing before construction. Where sod is to be removed, it shall be carefully removed, and the same re-sodded, or the area where sod has been removed shall be restored with new sod in the manner described in the applicable section. Fences - Any fence, or part thereof, that is damaged or removed during the course of the work shall be replaced or repaired by the Contractor, and shall be left in as good a condition as before the starting of the work.

Where fencing, walls, shrubbery, grass strips or area must be removed or destroyed incident to the construction operation, the Contractor shall, after completion of the work, replace or restore to the original condition all such destroyed or damaged landscaping and improvements.

## 16. Accidents

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration. The Contractor shall also comply with the OSHA requirements as defined in the United States Labor Code 29 CFR 1926.50.

In addition, the Contractor must report immediately to the Project Manager every accident to persons or damage to property, and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents.

## 17. Safety Precautions

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- All employees on the Project(s) site(s) and other persons who may be affected thereby;
- All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project(s) site(s); and
- Other property at the Project(s) Site(s) or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall designate a responsible member of its organization at the Project(s) site(s) whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Project Manager.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Project Manager has issued the Contractor a notice of Final Acceptance.

Contractor must adhere to the applicable environmental protection guidelines for the duration of a Project. If hazardous waste materials are used, detected or generated at any time, the Project Manager must be immediately notified of each and every occurrence. The Contractor shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities **as stated in FDOT Section 6.5.3 and Miami-Dade County environmental regulations**, which bear on the performance of the Work.

The Contractor shall take the responsibility to ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets, fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are necessary for the protection of its employees, as well as the public and City employees. All riggings and scaffolding shall be constructed with good sound materials, of adequate dimensions for their intended use, and substantially braced, tied or secured to ensure absolute safety for those required to use it, as well as those in the vicinity. All riggings, scaffolding, platforms, equipment guards, trenching, shoring, ladders and similar actions or equipment shall be OSHA approved, as applicable, and in accordance with all federal state and local regulations.

All open trenches or holes shall be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic. No open trenches or holes are to be left open during nighttime or non-working hours without the prior written approval of the Project Manager.

If an emergency condition should develop during a Project, the Contractor must immediately notify the Project Manager of each and every occurrence. The Contractor should also recommend any appropriate course(s) of action to the Project Manager.

## **18. Occupational Health and Safety**

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of a Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

- The chemical name and the common name of the substance;
- The hazards or other risks in the use of the substance, including;
  - The potential for fire, explosion, corrosion, and reaction;
  - The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the substance;
  - The primary routes of entry and symptoms of overexposure;
- The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the substances, including appropriate emergency treatment in case of overexposure;
- The emergency procedure for spills, fire, disposal, and first aid;
- A description in lay terms of the known specific potential health risks posed by the substance intended to alert any person reading this information; and,
- The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

## **19. Labor and Materials**

Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors at the Project(s) site(s) and shall not employ on the Project(s) any unfit person or anyone not skilled in the Work to which they are assigned.

## **20. Rules, Regulations, and Licenses**

The successful Contractor shall comply with all laws and regulations applicable to provision of services specified in the Contract Documents. The Contractor shall be familiar with all federal, state and local laws that may in affect the goods and/or services offered.

## **21. Consultant Services**

The City, at its sole discretion may hire a Consultant who shall serve as the City's Representative for the Project(s) to be performed under the Contract Documents. The Contract Documents will state that a City's representative has been contracted with for the management of the Work under the Contract Documents and who will be the lead point of contact, the Consultant or the Project Manager. Where a Consultant has been identified, the Consultant and the Project Manager will have authority to act on behalf of the City to the extent provided in the Contract Documents and as outlined in Section 2, General Terms and Conditions, Article 25, Authority of the Project Manager.

On the basis of the on-site observations, the Consultant will keep the Project Manager informed of the progress of the Work. The Consultant will exercise the best efforts to ensure faithful performance by both the Project Manager and the Contractor and will not show partiality to either.

The Project Manager will assist the Consultant in conducting inspections to determine the date or dates of Substantial Completion and Final Acceptance and will receive and review written warranties and related documents required by the Contract and the Contract Documents. The Consultant will be responsible for receiving all documentation for review and acceptance. Upon acceptance such documentation will be forwarded to the Project Manager. The Project Manager in conjunction with the Consultant will approve Schedules of Values, Project Schedules, Subcontractors and invoices.

The City may contract for additional consultant services, including but not limited to construction examination and observation services. Such services are intended to be additional services and are not intended to and shall not be construed to supplant or alter the role and responsibilities of the Consultant.

In case of the termination of employment of the Consultant, the City may, at its sole discretion, appoint another Consultant, whose status under the Contract shall be as that of the former Consultant.

## **22. Project Management**

Where a Contractor is awarded Work, the Contractor shall be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract Documents. Project Management shall include, but is not limited to: obtaining bids from Subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that Subcontractors comply with all City requirements; performing the Work in accordance with the Contract Documents to the satisfaction of the Project Manager; paying all Subcontractors; obtaining release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion.

## **23. Superintendence and Supervision**

The orders of the City are given through Project Manager, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time competent English speaking Superintendent and any necessary assistants, all satisfactory to Project Manager. The Superintendent shall not be changed except with the written consent of Project Manager, unless the Superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The Superintendent shall represent Contractor and all directions given to the Superintendent shall be as binding as if given to Contractor and will be confirmed in writing by Project Manager upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using its best skill and attention. The Project Manager shall be provided telephone number(s) for the Superintendent where the Superintendent can be contacted during normal working hours as well as after hours for emergencies.

On Projects in excess on thirty (30) calendar days the Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project(s) site(s); visitors to the Project site, including representatives of the City, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in indelible ink. The daily log shall be kept on the Project(s) site(s) and shall be available at all times for inspection and copying by Project Manager.

The Project Manager, Contractor shall meet at least every two (2) weeks or as otherwise determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

If Contractor, in the course of performing the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Plans, it shall be Contractor's duty to immediately inform Project Manager, in writing, and Project Manager, will promptly review the same. Any Work done after such discovery, until authorized, will be done at Contractor's sole risk.

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents and Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

All Work, including trade Work shall be performed and supervised by persons properly licensed for the Work being performed.

**24. Subcontractors**

Contractor is solely responsible for all acts and omissions of its Subcontractors. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. Contractor is responsible for the timely payment of its Subcontractors and suppliers as required by Florida Statute. Failure to comply with these payment requirements will place the Contractor in default of the Contract.

FDOT must review and approve all subcontracts.

Contractor shall not employ any Subcontractor against whom City and or Program Manager may have a reasonable objection. Contractor shall not be required to employ any Subcontractor against whom Contractor has a reasonable objection.

Contractor shall utilize the Subcontractors identified in its Bid submission. The replacement, addition, or deletion of any Subcontractor(s) shall be subject to the prior written approval of the Project Manager and FDOT. With the submission of its pay application the Contractor must identify the number of personnel they and the Subcontractor(s) are using who are working under H2B visas. Third tier subcontracting is only permitted with the prior written approval of the Project Manager and FDOT.

Contractor hereby agrees that Exhibit 1273 FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts, found on page 209, shall be attached to and incorporated within any and all agreements with Subcontractors. Subcontractors must also comply with FHWA-1273 Contract Provisions for Federal-Aid Constructions Contracts specified in Section V – Contract Work Hours and Safety Standards Act and Section VI – Subletting or Assigning the Contract.

**25. Authority of the Project Manager**

The Director hereby authorizes the Project Manager designated in the Contract Documents to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under this Contract Documents.

The Contractor shall be bound by all determinations or orders of the Project and shall promptly respond to requests of the Project Manager, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with the Project Manager's

determination or requests. Where requests are made orally, the Project Manager will follow up in writing, as soon thereafter as is practicable.

The Project Manager shall have authority to act on behalf of the City to the extent provided by the Contract Documents, unless otherwise modified in writing by the City. All instructions to the Contractor shall be issued in writing. All instructions to the Contractor shall be issued through the Director, Project Manager.

The Project Manager shall have access to the Project(s) Site(s) at all times. The Contractor shall provide safe facilities for such access so the Project Manager may perform their functions under the Contract. The Project Manager will make periodic visits to the Work Site to become generally familiar with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents.

The Project Manager will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

The Project Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever, in his or her opinion, it is considered necessary or advisable to ensure the proper completion of the Contract Documents the Project Manager will have authority to require special inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither the Project Manager's authority to act under this paragraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager to the Contractor, any Subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

All interpretations and recommendations of the Project Manager shall be consistent with the intent of the Contract Documents.

The Project Manager will not be responsible for the acts or omissions of the Contractor, any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

## **26. Inspection of Work**

The Project Manager, Consultant, Inspectors, and other City representatives shall at all times have access to the Work during normal work hours, and Contractor shall provide proper facilities for such access and for inspecting, measuring and testing.

Should the Contract Documents, Consultant/Inspector Project Manager's instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, Contractor shall give Project Manager timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than a City or contracted firm, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and, where practicable, at the source of supply. If any of the Work should be covered up without approval or consent of Project Manager, it must, if required by the Project Manager, be uncovered for examination and properly restored at Contractor's expense.

Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals. The Contractor shall give the City and the Project Manager timely notice of when and where tests and inspections are to be made so that the City and Consultant may be present for such procedures. All testing reports are to be sent directly to the Project Manager by the testing firm, with a copy to the Contractor.

Re-examination of any of the Work may be ordered by the Project Manager and Consultant, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in



accordance with the Contract Documents, City shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such cost.

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents or to delay the Work by failure to inspect the materials and Work with reasonable promptness without the written permission or instruction of Project Manager.

The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Contractor to any Inspector, directly or indirectly, is strictly prohibited, and any such act on the part of the Contractor will constitute a breach of this Contract.

**27. Taxes**

Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

**28. Separate Contracts**

Prior to the commencement of the Work the Project Manager will notify the Contractor of all ongoing projects or projects scheduled to commence during the Work that may require coordination. The Contractor shall be responsible for coordinating the Work with any other project to minimize any potential adverse impact. Contractor shall not be entitled to any days of delay for failure to properly coordinate the Work. The Project Manager will assist the Contractor in coordinating the Work. However, the sole responsibility for coordination rests with the Contractor.

If any part of Contractor's Work depends for proper execution or results, upon the work of any other persons, Contractor shall inspect and promptly report to Project Manager any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other contractor's work after the execution of Contractor's Work.

Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Contractor shall be liable to the affected contractor for the cost of such interference or impact.

To ensure the proper execution of subsequent Work, Contractor shall inspect the Work already in place and shall at once report to Project Manager any discrepancy between the executed Work and the requirements of the Contract Documents.

**29. Lands of Work**

City shall provide, as may be indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by City for the use of Contractor.

Contractor shall provide, at Contractor's own expense and without liability to City, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to City copies of written permission obtained by Contractor from the owners of such facilities.

**30. Differing Site Conditions**

The terms and requirements stated LAP FDOT Specifications Section 4-3.7 shall apply to this Article. Additionally, the Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify the Project Manager and Consultant in writing of the existence of the aforesaid conditions. Project Manager and the Consultant shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor.

**31. Coordination of Work**

The Project(s) Site(s) may be occupied and may operate on a twenty-four hour seven day a week schedule. Contractor shall ensure that the performance of the Work does not impact any ongoing operations at Project(s) Site(s), which also includes the delivery of any materials and equipment. Access to and egress from the Project(s) Site(s) shall be coordinated with the Project Manager to minimize interference to regular and emergency operations of the facility.

During progress of Work under this Contract, it may be necessary for other contractor's and persons employed by the City to Work in or about the Project(s). The City reserves the right to put such other contractors to work and to afford such access to the Project(s) site(s) of the Work to be performed hereunder at such times as the City deems proper.

If this Contract requires a portion of the Work to be tied into work done under another Contractor(s), it will be necessary for Contractor to plan its Work and cooperate with other contractors insofar as possible to prevent any interference and delay.

The Contractor shall not impede or interfere with the work of other contractors engaged in or about the Work and shall so arrange and conduct its Work that such other contractors may complete their work at the earliest date possible.

The Contractor is required to coordinate the Work with other contractors performing work at the Project(s) site(s).

**32. Existing Utilities**

Known utilities and structures adjacent to or encountered in the Work may be shown on the Drawings. Locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by either the City or its officials; employees for their accuracy or completeness. No request for additional compensation or contract time resulting from encountering utilities not shown will be considered. The Contractor shall explore sufficiently ahead of the Work to allow time for any necessary adjustments The Contractor must coordinate all underground utility locations through "Sunshine State One Call of Florida, Inc.", who shall be contacted a minimum of 48 hours before the Contractor commences any digging. In addition, the Contractor is responsible for removing all utility markings once the work is completed. Final payment to the Contractor may be withheld until the utility marks are removed.

**33. Contractor's Responsibility for Utility Properties and Service**

Where the Contractor's operations could cause damage or inconvenience to railway, telephone, fiber optic, television, electrical power, oil, gas, water, sewer, or irrigation systems, the Contractor shall make all arrangements necessary for the protection of these utilities and services or any other known utilities.

Notify all utility companies that are affected by the construction operation at least 48 hours in advance. Under no circumstance expose any utility without first obtaining permission from the

appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities and utility poles where necessary.

The Contractor and his Subcontractors shall be solely and directly responsible to the owner and operators of such properties for any damage, injury, expense, loss, inconvenience, delay, suits, actions, or claims of any character brought because of any injuries or damage which may result from the construction operations under the Contract Documents.

Neither the City nor its officers or agents shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the Work.

In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no event shall interruption of any utility service be allowed unless granted by the owner of the utility.

In the event water service lines that interfere with trenching are encountered, the Contractor may, by obtaining prior approval of the water utility, cut the service, dig through, and restore the service with similar and equal materials at the Contractor's expense and as approved by the Project Manager.

Replace, with material approved by the Project Manager, at Contractor's expense, any and all other laterals, existing utilities or structures removed or damaged during construction, unless otherwise provided for in the Contract Documents and as approved by the Project Manager.

Replace with material approved by the City, at Contractor's expense, any existing utilities damaged during the Work.

**34. Interfering Structures**

An attempt has been made to show major structures on the furnished Drawings. While the information has been compiled from the best available sources, its completeness and accuracy cannot be guaranteed, and is presented as a guide. The Contractor shall field verify all locations. Contractor shall coordinate with any affected companies, including utility companies and take necessary precautions to prevent damage to existing structures whether on the surface, above ground, or underground, including have the owner of the interfering structures place temporary supports.

**35. Field Relocation**

During the process of the Work, it is expected that minor relocations of the Work may be necessary. Such relocations shall be made only by the direction of the Project Manager at the Contractor's expense. If existing structures are encountered that will prevent construction as shown, the Contractor shall notify the Project Manager before continuing with the Work in order that the Project Manager may make such field revisions as necessary to avoid conflict with the existing structures. Where the Contractor fails to notify the Project Manager when an existing structure is encountered, and proceeds with the Work despite this interference, the Contractor does so at his own risk.

**36. Contractor's Use of Project Site(s)**

Limitations may be placed on the Contractor's use of the Project(s) Site(s) and such limitations will be identified by the Project Manager. In addition to such limitations, the Project Manager may make storage available to the Contractor at his sole discretion based on availability of space. The Contractor shall also coordinate and schedule deliveries so as to minimize disruptions to City day-to-day operations.

The Contractor shall limit its use of the Project(s) Site(s), so as to allow for the City's continuous operation. This is necessary, as the Project(s) Site(s) may remain in operation during the Work.

- The Contractor shall:
  - Confine operations at the Project(s) Site(s) to the areas permitted by the Project Manager; not disturb portions of the Project(s) Site(s) beyond the specified areas; conform to Project(s) Site(s) rules and regulations affecting the Work.
  - Keep existing driveways and entrances serving surrounding facilities clear and available to the City, its employees and the public at all times; not use areas for parking and/or storage of materials except as authorized by the Project Manager.
  - Assume all responsibility for its tools, equipment and materials, including any materials purchased for the Work and not accepted by the City, and its vehicles while performing Work for the City and/or while parked or stored at a City facility. The City assumes no liability for damage or loss to the items specified in this paragraph.

Access to parking and egress from the Project(s) Site(s) shall be subject to the approval of the Project Manager.

### **37. Material and Equipment Shipment, Handling, Storage and Protection**

#### Preparation for Shipment

When practical, equipment shall be factory assembled. The equipment parts and assemblies that are shipped unassembled shall be furnished with assembly plan and instructions. The separate parts and assemblies shall be factory match-marked or tagged in a manner to facilitate assembly. All assemblies are to be made by the Contractor at no additional cost to the City.

Generally, machined and unpainted parts subject to damage by the elements shall be protected with an application of a strippable protective coating, or other approved protective method.

Equipment shall be packaged or crated in a manner that will provide protection from damage during shipping, handling, and storage.

The outside of the package or crate shall be adequately marked or tagged to indicate its contents by name and equipment number, if applicable; approximate weight; state any special precautions for handling; and indicate the recommended requirements for storage prior to installation.

#### Packaging and Delivery of Spare Parts and Special Tools

Properly mark to identify the associated equipment by name, equipment, and part number. Parts shall be packaged in a manner for protection against damage from the elements during shipping, handling, and storage. Ship in boxes that are marked to indicate the contents. Delivery of spare parts and special tools shall be made prior to the time associated equipment is scheduled for the initial test run.

#### Shipment

All equipment and material shall be shipped with freight and shipping paid, FOB job site.

The Contractor shall request a 7-day advance notice of shipment from manufacturers, and, upon receipt of such notice, provide the Engineer with a copy of the current delivery information concerning equipment items and material items of critical importance to the Project schedule.

#### Receiving

The Contractor shall unload and record the receipt of all equipment and materials at the jobsite.

All costs for receiving, inspection, handling, storage, insurance, inventory control, and equipment maintenance for the Contractor-supplied and City-supplied materials and equipment shall be included in the prices Bid and no extra compensation will be allowed.

#### Inspection

Immediately upon receipt of equipment and materials at the jobsite, the Contractor shall inspect for completeness and any evidence of damage during shipment. City supplied equipment and material shall be inspected and inventoried together with City's Inspector. Should there appear to be any shortage or damage, the Project Manager shall be immediately notified; and the Contractor shall be fully responsible for informing the manufacturers and the transportation company of the extent of the shortage or damage. If the item or items require replacing or supplying missing parts, the Contractor shall take the necessary measures to expedite the replacement or supply the missing parts.

#### Handling

Equipment and materials received for installation on the Project(s) shall be handled in accordance with the manufacturer's recommendations, and in a manner that will prevent damage.

#### Storage

Equipment and materials shall be stored prior to installation as recommended by the manufacturer. Generally, materials such as pipe shall be stored off the ground in approved storage yards. Items subject to damage by the elements, vandalism, or theft shall be stored in secure buildings. Items requiring environmental control for protection shall be provided with the necessary environmentally controlled storage facilities at no cost to the City.

#### Insurance

The Contractor's insurance shall adequately cover the value of materials delivered but not yet incorporated into the Work.

#### Inventory Control

Equipment and materials shall be stored in a manner to provide easy access for inspection and inventory control. The Contractor shall keep a running account of all materials in storage to facilitate inspection and to estimate progress payments for materials delivered but not installed in the Work.

#### Equipment's Maintenance Prior to Acceptance by the City

The contractor shall provide the required or manufacturer's recommended maintenance during storage, during the installation, and until such time as the City accepts the equipment for full-time operation.

#### Salvage Equipment and Salvage Disposal / Salvage Credits

The City certifies that it shall **not** permit Salvage Credits, therefore, Federal excess and surplus property shall not be utilized in lieu of purchasing new equipment and property. Unused construction materials, highway appurtenances, or other equipment or material shall also not be salvaged.

Debris, rubbish, hazardous waste, and non-usable material resulting from the work under this Contract to which CITY does not claim a further interest as a result of the preceding paragraph, shall be disposed of by and at the expense of the Contractor at a location off CITY property. Hazardous wastes must be disposed of in accordance with the Resource Conservation and Recovery Act and state and local regulations. The contract adjustment factor includes the cost of all clean-up, including final cleanup on each individual Job Order.

### **38. Warranty of Materials and Equipment**

Contractor warrants to City that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents and

Contract/Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions within the Contract Documents.

**39. Manufacturer’s Instructions**

The Contractor shall:

Comply with manufacturer’s requirements for the handling, delivery and storage of all materials. Where required by the Contract Documents, Contractor shall submit manufacturer’s printed instructions for delivery, storage, assembly, and installation.

Comply with the manufacturer’s applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents including the Contract Documents.

Inspect each item of material or equipment immediately prior to installation and reject damaged and defective items.

Provide attachment and connection devices and methods for securing the Work; secure Work true to line plumb and level, and within recognized industry standards; allow for expansion and building movement; provide uniform joint width in exposed Work; arrange joints in exposed Work to obtain the best visual effect and refer questionable visual effect choices to the Consultant for final decision when applicable to the Work.

Recheck measurements and dimensions of the Work, as an integral step in starting each portion of the Work.

Install each unit or section of Work during favorable weather conditions, which shall ensure the best possible results in coordination with the entire Project(s) and isolate each unit of Work from incompatible Work as necessary to prevent potential interference among each section and/or deterioration of equipment.

Coordinate enclosure of the Work, which requires inspections and tests so as to minimize the necessity of uncovering Work for that purpose.

When required by the Contract Documents or the manufacturer, a qualified representative shall be present to observe field conditions, conditions of surface and installation, quality of workmanship, and applications. Manufacturer’s representative shall provide the Contractor and the Project Manager a written report of field observations.

**40. Manufacturer’s Warranty**

Contractor shall provide all manufacturers’ warranties. All warranties, expressed and/or implied, shall be made available to the City for material and equipment covered by this Contract Documents. All material and equipment furnished shall be fully guaranteed by the Contractor against factory defects and workmanship. At no expense to the City, the Contractor shall correct any and all apparent and latent defects that may occur within the manufacturer’s standard warranty. The Contract Documents may supersede the manufacturer’s standard warranty. Manufacturer’s warranties will become effective upon Final Acceptance of the Project(s).

**41. Reference Standards**

Reference to the standards of any technical society, organization or body shall be construed to mean the latest standard adopted and published at the date of request for qualifications, even though reference may have been made to an earlier standard. Such reference is hereby made a part of the Contract Documents the same as if herein repeated in full and in the event

of any conflict between any of these standards and those specified, the most stringent shall govern unless otherwise stated.

## **42. Submittals**

Contractor shall review and approve all shop drawing, samples, product data, schedule of values, and any and all other submittals to make sure they comply with the Contract Documents prior to submission to the Project Manager.

Contractor by approving and submitting any submittals, represents that they have verified the accuracy of the submittals, and they have verified all of the submittal information and documentation with the requirements of the Contract Documents. At time of submission the Contractor shall advise the Project Manager in writing of any deviations from the Contract Documents. Failure of the Contractor to advise the Project Manager of any deviations shall make the Contractor solely responsible for any costs incurred to correct, add or modify any portion of the Work to comply with the Contract Documents.

Each submittal shall contain a title block containing the following information:

- Number and title of drawing, including Contract title and Number
- Date of drawing and revisions
- Name of Contractor and Subcontractor (if any) submitting drawings
- Name of Project, Building or Facility, and Owner's Project number
- Specification Section title and number
- Contractor's Stamp of approval, signed by the Contractor or his checker
- Space above the title block for Project Manager's action stamp
- Submittal or re-submittal number (whether first, second, third, etc.)
- Date of submittal

Contractor shall sign, in the proper block, each sheet of shop drawing and data and each sample label to certify compliance with the requirements of the Contract Documents. Submittals submitted without the stamp and signature shall be rejected and it will be considered that the Contractor has not complied with the requirements of the Contract Documents. Contractor shall bear the risk of any delays that may occur as a result of such rejection.

City shall not be liable for any materials, fabrication of products or Work commenced that requires submittals until the Consultant has returned approved submittals to the Contractor.

Contractor shall submit six (6) originals of each submittal to the City. The City will return three marked/reviewed sets to the Contractor. A Contractor's letter of transmittal cover sheet must be attached to all submittals' packages being transmitted to the City and Consultant. The Contractor's letters of transmittal shall properly list and identify all submittal packages with number and description of each submittal within the letter of transmittal.

When catalogs, product data, diagrams or charts are submitted with more than one type of product manufactured, clearly identify the particular item being submitted, including options that are intended for use in that particular work or portion of work.

Contractor shall note in submittals/shop drawings to make references to Drawings, drawings details, Specifications Sections, or any of the Contract Documents, as necessary for clarity.

Project Manager and/or Consultant shall make every effort to review submittals within fourteen (14) calendar days from the date of receipt by the Project Manager and/or Consultant. Project Manager and/or Consultant's review shall only be for conformance with design concepts and the information provided in the Contract Documents. The approval of a separate item shall not constitute approval of an assembly in which the item functions. The Project Manager and/or Consultant shall return the reviewed submittal to the Contractor for their use and distribution.

Acceptance of any submittal by the City or Consultant shall not relieve the Contractor of any responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has given written notice to the Project Manager and/or Consultant of the specific deviations and the Consultant has issued written approval of such deviations.

By approving and submitting shop drawings, product data and samples, the Contractor represents that all materials, field measurements and field construction criteria related thereto have been verified, checked and coordinated with the requirements of the Work and have been verified, checked and coordinated with this Contract Documents.

Contractor shall be responsible for the distribution of all shop drawings, copies of product data and samples, which bear the Project Manager's or Consultant's stamp of approval. Distribution shall include, but not limited to; job site file, record documents file, Subcontractor, suppliers, and other affected parties or entities that require the information.

The Contractor shall also provide copies of all plans approved and permitted by the required governing authorities.

The Contractor shall not be relieved of responsibility for errors or omissions in any and all submittals by the Project Manager's or Consultant's acceptance thereof. The Contractor warrants the adequacy for the purpose intended of any shop drawings or portion of a submittal that alters, modifies or adds to the requirements of the Contract Documents.

Nothing in the Project Manager's or Consultant's review of submittals shall be construed as authorizing additional Work or increased cost to the City.

#### **43. Shop Drawings**

Contractor shall submit Shop Drawings as required by the Contract Documents. The purpose of the Shop Drawings is to show, in detail, the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with this Contract Documents.

Within five (5) calendar days after the City issue's a Notice to Proceed, Contractor shall submit to the City a complete list and submittal log of items for which Shop Drawings are to be submitted and shall identify the critical items and all submittal dates. Approval of this list by the City shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

After the approval of the list of items required in above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.

Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show its approval thereon. Contractor shall submit three (3) sets of shop drawings.

Some shop drawings as either denoted in the Contract Documents or by the Florida Building Code (Code) or Florida Statute, such as structural drawings, require that they be prepared by a licensed engineer. It is the sole responsibility of the Contractor to ensure that the Shop Drawings meet all Code requirements.

In addition to all shop drawings required by the Contract Documents the Contractor must provide shop drawings for; all drainage structures including catch basins, drainage pipe, ballast rock, and exfiltration trench filter fabric.

If the Shop Drawings show or indicate departures from the Contract Documents, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract and Documents.



The City shall review and accept or reject with comments, Shop Drawings within fourteen (14) calendar days from the date received. Project Manager's or Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract Documents and not indicated on the Shop Drawings. No Work called for by Shop Drawings shall be performed until said Shop Drawings have been approved by Project Manager and/or Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Project Manager and/or Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

The minimum size for shop drawings shall be 11" X 17". Each shop drawing shall be clear, thoroughly detailed and shall have listed on it all Contract Documents references, drawing number(s), specification section number(s) and the shop drawing numbers of related work. Shop drawings must be complete in every detail, including location of the Work. Materials, gauges, methods of fastening and spacing of fastenings, connections with other work, cutting, fitting, drilling and any and all other necessary information per standard trade practices or as required for any specific purpose shall be shown.

Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, the Project Manager and/or Consultant are entitled to rely upon the accuracy and completeness of such calculations and certifications submitted by the Contractor. Calculations, when required, shall be submitted in a neat clear and easy format to follow.

Contractor shall keep one set of Shop Drawings marked with Project Manager's and/or Consultant's approval at the job site at all times.

**44. Product Data**

Contractor shall submit four (4) copies of product data, warranty information and operating and maintenance manuals. Each copy must be marked to identify applicable products, models, options and other data. Contractor shall supplement manufacturer's standard data to provide information unique to the Work.

Contractor shall only submit pages that are pertinent. Submittals shall be marked to identify pertinent products, with references to the specifications and the Contract Documents. Identify reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

Contractor shall submit a draft of all product data, warranty information and operating and maintenance manuals at 50% completion of construction.

**45. Samples**

Contractor shall submit samples to illustrate the functional characteristics of the product(s). submittals shall be coordinated for different categories of interfacing Work. Contractor shall include identification on each sample and provide full information.

**46. Record Set**

Contractor shall maintain in a safe place at the Project(s) site(s) one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, shop drawings, amendments, Change Orders, RFIs, and Field Directives, as well as all written interpretations and clarifications issued by the City in good order and annotated to show all changes made during construction. The record documents shall be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated record documents. As a condition precedent to City's obligation to pay Contractor, the Contractor shall provide evidence, satisfactory to the Project Manager and the Consultant, that Contractor is fulfilling its obligation to continuously update the record documents. All buried items, outside the Project(s) site(s), shall be accurately located on the record documents as to depth and in relationship to not less than two (2) permanent features (e.g., interior or exterior wall faces). The record documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record documents shall be available to the City and the Consultant for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, the record documents shall be delivered to the the City by the Contractor. The Record Set of Drawing shall be submitted in both hard copy and as electronic plot files.

**47. Supplemental Drawings and Instructions**

The City shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Supplemental Instructions involve no change in the Contract Documents Price or this Contract Documents Time.

The City shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern.

**48. Contractor Furnished Drawings**

The Contract Documents may require the Contractor to furnish design, shop and/or as-built drawings depending on the nature and scope of the Work to be performed. The following applies to the different types of drawings.

The Project Manager and/or Consultant shall, after review of the drawings, initial and mark the drawings in one of the following manners:

1. ACCEPTED - No correction required.
2. PROCEED AS CORRECTED - Minor changes or corrections identified. Work can proceed subject to re-submittal and acceptance of the drawings.
3. REVISE AND RESUBMIT- Significant changes or corrections are recommended. Submittal must be revised and resubmitted for acceptance prior to Work proceeding.
4. REJECTED - Not in accordance with the Contract and/or Contract Documents due to excessive changes or corrections or other justifiable reason. Drawings must be corrected and resubmitted prior to any Work being performed.

Revisions required by the permitting jurisdiction must also be reviewed and accepted by the City prior to resubmission to the permitting agency.

Acceptance by the City shall not relieve the Contractor from responsibility for errors and omissions in the drawings.

**49. Substitutions**

Substitutions will only be considered after the award of the Contract. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Consultant for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager and the Consultant in evaluating the proposed substitute. The City may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Consultant, if the Contractor submits sufficient information to allow the Consultant to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Consultant shall be the same as those provided herein for substitute materials and equipment.

The Consultant shall be allowed a reasonable time within which to evaluate each proposed substitute. The Consultant and the City shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the City's and the Consultant's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. The City and the Consultant may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the City and the Consultant rejects the proposed substitute, at their discretion, the City may require the Contractor to reimburse the City for the charges of the Consultant for evaluating the proposed substitute.

Contractor shall maintain sole liability and responsibility for ensuring that all substitutions and any required design of such are in full compliance with and meet all the requirements of the Contract Documents.

**50. City Furnished Drawings**

The City, at its sole discretion, may furnish design drawings. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the Project Manager and the Consultant any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the Work. The Contractor shall be solely responsible for verifying the accuracy of the drawings prior to commencing the Work, and shall be responsible for any errors or revisions of the Work, which might have been avoided by notifying the City prior to commencement. This shall also apply to any revisions or

omissions identified by the Contractor. The Contractor shall submit all requests for information entitled Request for Information (RFI). The City shall respond to all RFI's in writing.

The Contractor shall have no basis for any claim for additional costs resulting from their failure to identify any required revisions, omissions and/or errors, not identified in writing to the City prior to commencing the Work.

**51. Interpretation of Drawings and Documents**

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Project(s), should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Consultant will clarify in writing the intent of the drawings and/or specifications and the Contractor agrees to abide by the Project Manager's or Consultants interpretation and perform the Work in accordance with the decision of the Project Manager or the Consultant. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

The drawings are to be addressed as a complete set and should not be used in parts. Contractor is responsible to coordinate the set of drawings with all trades to ensure that the Work will be performed correctly and coordinated among the trades. Contractor shall not scale the drawings.

**52. Product and Material Testing**

All tests shall be performed by the Contractor, except where otherwise specifically stated in the Contract Documents. All costs for testing performed by the Contractor shall be at the Contractor's expense. All reports are to be sent directly to the City's Project Manager with a copy to the Contractor. The City may, in its sole and absolute discretion, test materials and products at its own cost. However, should such materials or products fail to pass the test and/or meet the requirements of the Contract Documents, the Contractor shall reimburse the City for the cost of such tests and repair or replace said materials or products. In such instances the City may deduct such cost from any payments pending to the Contractor. The City may require that the Contractor provide the name and qualification of the company(ies) providing the testing services, inclusive of the testing laboratory(ies). The City, in its sole discretion, may accept or reject the use of any company or laboratory that it determines does not possess the required licenses or expertise to perform their portion of the Work.

**53. Field Directives**

The City may at times issue field directives to the Contractor based on visits to the Project(s) Site(s). Such Field Directives shall be pre-approved by FDOT and issued in writing, and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor shall, within 48 hours, notify the City that the work is outside the scope of the Work. At that time the Field Directive may be rescinded or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the City's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the City that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive. At no time shall the Contractor refuse to comply with the directive. Failure to comply with the directive may result in a determination that the Contractor is in default of the Contract.

**54. Changes in the Work or Contract Documents**

The provisions stated in FDOT Section 4-3 Alteration of Plan or of Character of Work shall apply to this Article.

Any changes to the terms of the Contract Documents must be pre-approved by FDOT and contained in a written document, executed by the parties hereto. This section shall not prohibit the issuance of Change Orders executed only by the City.

**55. Continuing the Work**

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Price or Contract Time for completion. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.

**56. Change Orders**

Changes in the quantity or character of the Work within the scope of the Project(s) which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the City.

In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, City reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to the Director as set forth in Section 2, General Terms and Conditions, Article 91, Resolution of Disputes. During the pendency of the dispute, and upon receipt of a Change Order approved by City, Contractor shall promptly proceed with the change in the Work involved and advise the Project Manager, Consultant, and Director in writing within seven (7) calendar days of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

On approval of any Contract change increasing the Contract Price, Contractor shall ensure that the performance bond and payment bond (if applicable) are increased so that each reflects the total Contract Price as increased.

Under circumstances determined necessary by City, Change Orders may be issued unilaterally by City.

The City reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract Documents. Any such changes will be known as Extra Work.

No Extra Work shall be performed except pursuant to written orders of the Project Manager expressly and unmistakably indicating his/her intention to treat the Work described therein as Extra Work. In the absence of such an order, the Project Manager may direct, order or require the Contractor to perform any Work including that which the Contractor deems to be Extra Work. The Contractor shall nevertheless comply and shall promptly and in no event after, begin the performance thereof or incur cost attributable thereto and give written notice to the Project Manager stating why he deems such Work (hereinafter "Disputed Work") to be Extra Work. Said notice is for the purposes of (1) affording an opportunity to the Project Manager to cancel such order, direction or requirements promptly; (2) affording an opportunity to the Project Manager to keep an accurate record of materials, labor and other items involved; and (3) affording an opportunity to the City to take such action as it may deem advisable in light of such disputed Work.

**57. Change Order Procedure**

Extra Work shall result in an equitable adjustment (increase or decrease) to the Contract representing the reasonable cost or the reasonable financial savings related to the change in Work. Extra Work may also result in an equitable adjustment in the Contract schedule for performance for both the Extra Work and any other Work affected by the Extra Work.

The City shall initiate the Extra Work procedure by a notice to the testing

Contractor outlining the proposed Extra Work. Upon receipt of the notice to proceed with the Extra Work, the Contractor is required to immediately start the Extra Work. The Contractor is required to obtain permission for an extension to start the Extra Work if it is beyond the Contractor's ability to start within the allotted timeframe.

The Contractor is required to provide the Project Manager with a detailed Change Proposal Request, using City Forms CPR Parts A-C (available on the CITP webpage), which shall include requested revisions to the Contract, including but not limited to adjustments in this Contract Price and Contract Time. The Contractor is required to provide sufficient data in support of the cost proposal demonstrating its reasonableness. In furtherance of this obligation, the City may require that the Contractor submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Contractor's Change Proposal Request. The Contractor's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the Extra Work on the Project(s). If the Contractor fails to notify the Project Manager of the schedule changes associated with the Extra Work, it will be deemed to be an acknowledgment by Contractor that the proposed Extra Work will not have any scheduling consequences. The Contractor agrees the Change Proposal Request will in no event include a combined profit and overhead rate in excess of ten (10%) percent of the direct labor and material costs, unless the Project Manager determines that the complexity and risk of the Extra Work is such that an additional factor is appropriate. The Change Proposal Request may be accepted or modified by negotiations between the Contractor and the City. If an agreement on the Extra Work is reached, both parties shall execute the Extra Work order in writing via a Change Order. The execution by the Contractor of the Change Order shall serve as a release of the City from all claims and liability to the Contractor relating to, or in connection with, the Extra Work, including any impact, and any prior acts, neglect or default of the City relating to the Extra Work.

Upon execution of a change order that affects the Contract Time the Contractor shall, within five (5) business days submit a revised Project schedule reflecting the changes against the baseline schedule.

**58. No Oral Changes**

Except to the extent expressly set forth in the Contract, no change in or modification, termination or discharge of the Contract or, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the parties charged, therewith or their duly authorized representative.

**59. Value of Change Order Work**

Provisions in LAP FDOT Section 4-3 shall apply to this Article. Where provisions of standards are in conflict, the more restrictive or higher quality shall govern. The value of any Work covered by a Change Proposal Request or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- Where the Work involved is covered by unit prices contained in the Contract, by application of unit prices to the quantities of items involved.
- By mutual acceptance of a lump sum which Contractor and Project Manager acknowledge contains a component for overhead and profit.
- On the basis of the "cost of Work," determined as provided in this, plus a Contractor's fee for overhead and profit which is determined as provided in this Article.
- The term "Cost of Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by the Project Manager, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in herein.

Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Proposal Request under schedules of job classifications agreed upon by Project Manager and Contractor. Payroll costs for employees not employed full time on the Work covered by the Change Proposal Request shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by City.

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to City and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

If required by the City, Contractor shall obtain competitive bids for the Change Order Work. Contractor shall deliver such competitive bids to the City who will determine which bids will be accepted. If the Subcontractor is to be paid on the basis of cost of the Work plus a fee, the Subcontractor's cost of the Work shall be determined in the same manner as Contractor's cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

The term "Cost of the Work" shall include any of the following:

- Cost of special consultants, including, but not limited to, consultants, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the Work described in the Change Order.
- Supplemental costs including the following:
- The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.

- Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and less market value of such items used but not consumed which remains the property of Contractor.
- Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.
- Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.
- The cost of utilities, fuel and sanitary facilities at the site.
- Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- Cost of premiums for additional bonds and insurance required because of changes in the Work.

The term "Cost of the Work" shall **not** include any of the following:

- Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, consultants, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon schedule of job classifications., all of which are to be considered administrative costs covered by Contractor's fee.
- Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
- Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
- Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Article.

Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

- A mutually acceptable fixed fee or if none can be agreed upon,
- A fee based on the following percentages of the various portions of the cost of the Work:
  - Where the Contractor self-performs the Work, Contractor's fee shall not exceed ten percent (10%).
  - Where a Subcontractor performs the Work, Contractor's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and
  - No fee shall be payable for special consultants or supplemental costs.



Contractor's overhead is considered to cover all indirect costs and shall also include the costs of insurance and bonds.

The amount of credit to be allowed by Contractor to City for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.

Whenever the cost of any Work is to be determined pursuant to this Article, Contractor will submit in a form acceptable to Project Manager an itemized cost breakdown together with the supporting data.

Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order may be issued to adjust the unit price, if warranted.

Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to the Project Manager.

- Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.
- Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.
- Each Change Order must state within the body of the Change Proposal Request whether it is based upon unit price, negotiated lump sum, or "cost of the Work."

#### **60. Extra Work Directive**

Provisions in LAP FDOT Sections 4-3.2 to 4-3.5 shall apply to this Article. Where provisions of codes or industry standards are in conflict, the more restrictive or higher quality shall govern. Except as provided below, the Contractor shall be entitled to initiate a dispute pursuant to Section 2, General Terms and Conditions, Article 91, Resolution of Disputes, by furnishing a written statement to the Project Manager within five (5) days of the Extra Work Directive, based upon any aspect, of such Extra Work which the Contractor disputes

#### **61. As-Built Drawings**

During the Work, Contractor shall maintain records of all deviations from the Drawings and Specifications as approved by the Project Manager or Consultant and prepare As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the City and certify in writing that the As-Built Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor. Indicate the size, depth and voltage in each conduit.

Legibly mark to record actual construction: On-site structures and site Work as follows:

- Depths of various elements of foundation in relation to finish first floor datum.
- All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements. Actual installed pipe material, class, etc.

- Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.
- Field changes in dimensions and details.
- Changes made by Project Manager's written instructions or by Change Order.
- Details not on original Contract Drawings.
- Equipment, conduit, electrical panel locations.
- Project Manager's or Consultant's schedule changes according to Contractor's records and shop drawings.

Specifications and Addenda: Legibly mark each section to record:

- Manufacturer, trade name, catalog number and Supplier of each product and item of equipment actually installed.
- Changes made by Project Manager's or Consultant's written instructions or by Change Order.

Approved Shop Drawings: Provide record copies for each process equipment, piping, electrical system and instrumentation system.

As-built documents shall be updated monthly as a condition precedent to payment. Contractor shall provide complete as-built information relative to location, size, and depth of new pipes, manholes, inlets, etc. Identify grading; include locations of fittings, valves, fire hydrants, changing in pipe materials, water sampling points, thrust blocks, benchmarks, etc. The information shall be accurately recorded by the Contractor and submitted (signed and sealed by a Florida Professional Surveyor and Mapper (P.S.M.) to the City of Miami prior final acceptance of the Work. All recorded information on existing utility crossing encountered during construction, included but not limited to pipes, inlets, manholes, etc., shall be recorded by a Florida Registered Surveyor and shown on the record drawings.

The Project's as-built set of drawings shall include GPS coordinates (X, Y, and Z) for all new and/or existing vacuum cleaned drainage system openings (i.e., catch basins, inlets, manholes, etc.).

**62. Worker's Identification**

The Contractor's employees, who include any Subcontractor, shall wear an identification card provided by the Contractor. The identification card shall bear the employee's picture, name, title and name of the employer. Failure by a Contractor's employee to wear such identification may result in his removal from the Work until such time as the identification card is obtained and worn. Such removal shall not act as a basis for the Contractor to submit a claim for an extension of time.

**63. Removal of Unsatisfactory Personnel**

The City may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor shall respond to the City within seven (7) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The City shall make the final determination as to the removal of unsatisfactory personnel from Work assigned by City. The Contractor agrees that the removal of any of its employees does not require the termination or demotion of employee(s).

**64. Substantial Completion, Punch List, and Final Completion**

The Work shall be substantially complete when the Project Manager, in the reasonable exercise of his/her discretion determines that the Work is complete and there are no material and/or substantial variations from the Contract Documents and the Work is fit for its intended purpose. Upon Substantial Completion, the Project Manager and the Contractor shall sign the Substantial Completion Inspection Form. The signing of this form shall not relieve the Contractor from its obligation to complete the Project.

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the Project Manager inspect the Work to determine if Substantial Completion has been achieved. No request for Substantial Completion inspection is to be submitted until the Contractor has obtained a Certificate(s) of Occupancy, Certificate of Completion or Use, or a Temporary Certificate of Occupancy or any other approvals from agencies having jurisdiction over the Work. The Project Manager shall schedule the date and time for any inspection and notify the Contractor and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work shall be identified on this form and shall be known as Punch List Work. The Punch List shall be signed by the Project Manager and/or Consultant, and the Contractor confirming that the Punch List contains the item(s) necessary to complete the Work. The failure or refusal of the Contractor to sign the Project Substantial Completion Inspection Form or Punch List shall not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the City.

Where the Punch List is limited to minor omissions and defects, the Project Manager shall indicate that the Work is substantially complete subject to completion of the Punch List. Where the Project Manager determines, on the appropriate form that the Work is not substantially complete, the Project Manager shall provide a list of all open items necessary to achieve Substantial Completion. Upon completion of such Work, the Contractor shall request another Substantial Completion inspection.

The Project Manager and the Contractor shall agree on the time reasonably required to complete all remaining Work included in the Punch List.

Upon the receipt of all documentation, resolution of any outstanding issues and issuance of final payment, the Project Manager shall notify the Contractor in writing of the closeout of the Project.

The City will prepare a Certificate of Substantial Completion in the form which shall establish the Date of Substantial Completion. Once substantial completion is achieved the City shall be responsible for security, maintenance, heat, utilities, damage to the Project site, and insurance; and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Final Acceptance completion of the Work or designated portion thereof unless otherwise provided in the Contract Documents.

**65. Acceptance and Final Payment**

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Project Manager and/or Consultant shall, within ten (10) calendar days, make an inspection thereof. If Project Manager and/or Consultant find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final

Certificate for Payment **shall** be issued by Project Manager, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

Before issuance of the Final Certificate for Payment, Contractor shall deliver to the Project Manager a final release of all liens arising out of the Contract Documents, receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings; operations and maintenance data, and the final bill of materials, if required, and payment application. Contractor shall deliver the written Contractor's warranty and all Manufacturer's warranties prior to issuance of the Final Certificate for Payment.

Prior to approval of final payment, the Project Manager shall provide written confirmation to the Contractor that any and all training required by the Contract Documents has been provided to the satisfaction of the Project Manager.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of Contractor, and Project Manager so certifies, City shall, upon such certification of Consultant, and without terminating the Contract Documents, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

#### **66. NPDES Requirements**

Contractor shall comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP shall be included in the Bid prices. For further information on compliance requirements for NPDES and SWPPP contact the City of Miami Public Works Department at (305) 416-1200 or visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Contractor is responsible for obtaining, completing and paying for any required NPDES application or permits that may be required.

#### **67. Force Majeure**

Should any failure to perform on the part of Contractor be due to a condition of force majeure as that term is interpreted under Florida law, the City may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor shall request a time extension from the City within two (2) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Do Not Include** inclement weather except as permitted by Florida law and may not include the acts or omissions of Sub-contractors.

#### **68. Extension of Time**

Provisions of LAP FDOT Section 8-7.3.2 shall apply to this Article.

**69. Notification of Claim**

Provisions in LAP FDOT Section 5-12 shall apply to this Article. Where provisions of codes, or standards are in conflict, the more restrictive or higher quality shall govern. Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Project Manager and to Consultant within ten (10) business days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the Project Manager allows an additional period of time to ascertain more accurate data in support of the claim and such notice shall be accompanied by Contractor's written notarized statement that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims for changes in the Contract Time or Contract Price shall be determined by the Project Manager in accordance with Section 2, General Terms and Conditions, Article 71, Contractor's No Damages for Delay; Time Extensions Only hereof, if City and Contractor cannot otherwise agree. It is expressly and specifically agreed that any and all claims for changes to the Contract Time or Contract Price shall be waived if not submitted in strict accordance with the requirements of this Article.

**70. Extension of Time not Cumulative**

In case the Contractor shall be delayed for any period of time by two or more of the causes mentioned in Section 2, General Terms and Conditions, Article 72, Excusable Delay, Non Compensable, the Contractor shall not be entitled to a separate extension for each one of the causes; only one period of extension shall be granted for the delay.

**71. Contractor's No Damages for Delay; Time Extensions Only**

LAP FDOT Section 8-7.3.2 shall apply to this section. Where provisions of codes or standards are in conflict, the more restrictive or higher quality shall govern. No claim for damages or any claim, other than for an extension of time, shall be made or asserted against City by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of City or its Consultant. Otherwise, Contractor shall be entitled only to extensions of the Contract Time for completion of the Work as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Except as may be otherwise specifically provided for in the Contract Documents, the Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the City or any of its representatives (whether it is an Excusable Delay or otherwise) and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work. In this regard, the Contractor alone hereby specifically assumes the risk of such delays, including without limitation: delays in processing or approving shop drawings, samples or other submittals or the failure to render determinations, approvals, replies, inspections or tests of the Work, in a timely manner. Contractor shall not receive monetary compensation for City delay. Time extensions may be authorized by the City in certain situations.

**72. Excusable Delay, Non-Compensable**

Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers and vendors, and is also caused by circumstances beyond the control of the City or Consultant, or (ii) is caused jointly or concurrently by Contractor or its Subcontractors, suppliers or vendors and by the City or Consultant. Then Contractor shall be entitled only to a time extension and no compensation for the delay.

Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Section 2, General Terms and Conditions, Article 69, Notification of Claim, hereof.

Failure of Contractor to comply with Article 69, Notification of Claim hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

**73. Lines and Grades**

The Contractor shall, at its own expense, establish all working and construction lines and grades as required from the Project control points set by the City, and shall be solely responsible for the accuracy thereof.

**74. Defective Work**

LAP FDOT Sections 6-4 and 9-5.3.1 shall apply to this Article. Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern. Project Manager shall have the authority to reject or disapprove Work which Project Manager finds to be defective. If required by Project Manager, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Project Manager City shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by City in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor, or may be charged against the Performance Bond, In the event of failure of Contractor to make all necessary repairs promptly and fully, City may declare Contractor in default.

If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from City, shall promptly correct such defective or nonconforming Work within the time specified by City without cost to City, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, or obligate City to final acceptance.

**75. Acceptance of Defective or Non-Conforming Work**

In accordance with LAP FDOT Sections 6-4 and 9-5.3, the City will not accept Defective or Non-Conforming Work.

**76. Uncovering Finished Work**

The Project Manager's, Inspector's and/or Consultant's right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. The Project Manager /or Consultant shall notify the Contractor in writing concerning all uncovered finished Work. Should the Work prove to be in accordance with the Contract Documents, the uncovering or taking down and the replacing and the restoration of the parts removed will be treated as Extra Work for the purpose of computing additional compensation and an extension of time. Should the Work examined prove unsatisfactory, such uncovering, taking down, replacing and restoration shall be at the expense of the Contractor. Such expenses shall also include repayment to the City for any and all expenses or costs incurred by it, including employee salaries or related cost, in connection with such uncovering, taking down, replacing and restoration at the Project(s) site(s).

**77. Correction of Work**

The Contractor shall promptly correct all Work rejected by the Project Manager as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work, including the cost of the City's additional services thereby made necessary.

The Contractor further agrees that after being notified in writing by the Project Manager of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Contractor will commence and prosecute with due diligence all Work necessary to fulfill the terms of the Contract and to complete the Work within a reasonable period of time, as determined by the Project Manager and in the event of failure to so comply, the Contractor does hereby authorize the City to proceed to have such Work done at the Contractor's expense and that the Contractor will pay the cost thereof upon demand. The City shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Contractor's refusal to pay the above costs. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of personnel, property, or licensees, the City may undertake, at the Contractor's expense, without prior notice, all Work necessary to correct such hazardous condition when it was caused by Work of the Contractor not being in accordance with the requirements of the Contract.

If, within one (1) year after the date of final completion of the Project or within such longer period of time as may be prescribed by law, by the Contract Documents, or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the City to do so. The City shall give such notice promptly after discovery of the condition.

All such defective or non-conforming Work shall be removed from the site if necessary and the Work shall be corrected to comply with the Contract Documents without cost to the City.

**78. Maintenance of Traffic and Public Streets**

Scope of Work

The Contractor shall be responsible for the maintenance of public streets and traffic control necessary to perform the Work under the Contract Documents. The cost of traffic control shall be included in the Contractor's Bid.

Regulations

As used herein, any reference to Miami-Dade County, its departments, or its published regulations, permits and data, shall be synonymous and interchangeable with other recognized governing bodies over particular areas or streets, or their departments, published regulations (i.e., Manual of Uniform Traffic Control Devices (MUTCD), FDOT

Roadway and Bridge Standard Index Drawing Book), permits or data. The Contractor shall abide by all applicable laws, regulations, and codes thereof pertaining to Maintenance of Traffic (MOT) on public streets, detour of traffic, traffic control and other provisions as may be required for this Project.

#### Maintenance of Traffic (MOT)

- The Contractor shall be fully responsible for the MOT on public streets, detour of traffic (including furnishing and maintaining regulatory and informative signs along the detour route), traffic control, and other provisions, throughout the Project, as required by the Manual of Uniform Traffic Control Devices (MUTCD), and FDOT Roadway and Bridge Standard Index drawing Book. Traffic shall be maintained according to corresponding typical traffic control details as outlined in the previous noted standards. No street shall be completely blocked, nor blocked more than one-half at any time, keeping the other one-half open for traffic, without specific approval.
- If required by the Project Manager, Traffic Division or FDOT or as otherwise authorized by the Project Manager, the Contractor shall make arrangements for the employment of uniformed off-duty policemen to maintain and regulate the flow of traffic through the work area. The number of men required and the number of hours on duty necessary for the maintenance and regulation of traffic flow shall be provided by the City of Miami Police Department.
- The Contractor shall provide all barricades with warning lights, necessary arrow boards and signs, to warn motorists of the Work throughout the Project. Adequate approved devices shall be erected and maintained by the Contractor to detour traffic.
- Excavated or other material stored adjacent to or partially upon a roadway pavement shall be adequately marked for traffic safety at all times. The Contractor shall provide necessary access to all adjacent property during construction.
- The Contractor shall be responsible for the provision, installation and maintenance of all MOT and safety devices, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Roadway and Bridge Standards index drawing book. In addition, the Contractor shall be responsible for providing the Consultant with MOT plans for lane closures and/or detours for approval. These plans (sketches) shall be produced, signed and sealed by a professional Engineer registered in the State of Florida, employed by the Contractor and certified under FDOT Procedure NPIL No. 625-010-010.
- Where excavations are to be made in the vicinity of signalized intersections, attention is directed to the fact that vehicle loop detectors may have been embedded in the pavement. Verify these locations by inspecting the site of the Work and by contacting the Sunshine State One-Call Center (1-800-432-4770), 48 hours prior to any excavation. Any loop detector which is damaged, whether shown on the Plans or not, shall be repaired or replaced to the satisfaction of the Miami Dade County Signs and Signal Division (Phone No. 305-592-3470).
- Where applicable, the Contractor shall notify the Traffic Division 24 hours in advance of the construction date or 48 hours in advance of construction within any signalized intersection.
- Temporary pavement will be required over all cuts in pavement areas, and also where traffic is to be routed over swale or median areas. When the temporary pavement for routing traffic is no longer necessary, it shall be removed and the swale or median areas restored to their previous condition.
- Pavement markings damaged during construction shall be remarked, as required by the Traffic Division.



#### Maintenance of Traffic for Bypass Pumping

- The Contractor shall take appropriate steps to ensure that all temporary pumps, piping and hoses are protected from vehicular traffic and pedestrian traffic.

#### Lane Closures

- Where construction of the Project shall involve lane closures public streets, the following shall apply:
- Lane closures require a Lane Closure Permit, obtained two weeks prior to planned construction, with a minimum 48-hour prior notice to local police and emergency departments (some police jurisdictions may require considerably more notice). Lane closures of a one day or less duration will generally not be approved for major collector streets or for arterial streets during the hours of 7am to 9am and 4pm to 6pm weekdays.

### **79. Location and Damage to Existing Facilities, Equipment or Utilities**

As far as possible, all existing utility lines in the Project(s) area(s) will be shown on the plans. However, City does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to field verify all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to the Contractor because of discrepancies in actual and plan location of utilities, and damages suffered as a result thereof.

The Contractor shall notify each utility company involved at least fourteen (14) calendar days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Contractor shall be paid by the Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by the Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

The Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. The Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to the Contractor for any loss of time or delay.

All overhead, surface or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. The City reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of the Contractor. All such repairs made by the Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling.

### **80. Stop Work Order**

The City may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90) days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the City shall either:

- Cancel the Stop Work Order; or

- Terminate the Work covered by such order as provided in Article 90, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time for Substantial Completion to the extent that, in the opinion of the Project Manager, the Contractor may have been delayed by such suspension. In the event the Project Manager determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor or any other reason caused by Contractor's fault or omission, the Contractor shall not be entitled to an extension of time as a result of the issuance of a Stop Work Order.

## **81. Hurricane Preparedness**

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the Project Manager has given notice of same.

Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the City has directed such suspension, will entitle the Contractor to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

## **82. Use of Completed Portions**

City shall have the right, at its sole option, to take possession of and use any completed or partially completed portions of the Project(s). Such possession and use shall not be deemed an acceptance or beneficial use or occupancy of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to reasonable extra compensation, or reasonable extension of time or both, as determined by Project Manager.

In the event City takes possession of any completed or partially completed portions of the Project, the following shall occur:

- City shall give notice to Contractor in writing at least thirty (30) calendar days prior to City's intended occupancy of a designated area.
- Contractor shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion from Project Manager.
- Upon Project Manager's issuance of a Certificate of Substantial Completion, City will assume full responsibility for maintenance, utilities, subsequent damages of City and public, adjustment of insurance coverage's and start of warranty for the occupied area.
- Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by the Project Manager on the Certificate of Substantial Completion, as specified in the Punch List and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Project Manager shall issue a Certificate of Final Payment relative to the occupied area.
- If City finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by City and Contractor and to which the insurance company

or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

**83. Cleaning Up; City's Right to Clean Up**

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of a Project(s), Contractor shall: **i)** remove all its waste materials and rubbish from and about the Project(s) as well as its tools, construction equipment, machinery and surplus materials; and **ii)** remove all utility markings made for purposes of performing the Work. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, City may do so and the cost thereof shall be charged to the Contractor. If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up, City may clean up and charge the cost thereof to the contractors responsible therefore as the Project Manager and/or Consultant shall determine to be just. All combustible waste materials shall be removed from the Project(s) at the end of each day. Cleaning operations should be controlled to limit dust and other particles adhering to existing surfaces.

**84. Removal of Equipment**

In case of termination of this Contract before completion for any cause whatsoever, Contractor, if notified to do so by City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of City. If the Contractor does not comply with City's order, the City shall have the right to remove such equipment and supplies at the expense of Contractor.

**85. Set-offs, Withholdings, and Deductions**

The City may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

- Any amount of any claim by a third party;
- Any Liquidated Damages, and/or;
- Any unpaid legally enforceable debt owed by the Contractor to the City.

The City shall notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, shall be paid to the Contractor in accordance with the Local Government Prompt Payment Act.

**86. Event of Default**

An event of default shall mean a breach of the Contract or by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include but not limited to, the following:

- The Contractor has not performed the Work in a timely manner;
- The Contractor has refused or failed, except in case for which an extension of time is provided, to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
- The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services or materials they have provided;
- The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

- The Contractor has failed to obtain the approval of the City where required by the Contract Documents;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work, the City shall notify the Contractor in writing that it must, within the time frame set forth in the City's request, provide adequate assurances and a plan of action to the City, in writing, of the Contractor's ability to perform in accordance with the terms of the Contract Documents. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed time frame, the City may:
  - Treat such failure as a repudiation of the Contract and/or;
  - Resort to any remedy for breach provided herein or by law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.
- In the event the City may, at its sole discretion terminate the Contract for default, the City or its designated representatives may immediately take possession of all applicable documentation and data.
- Where the City erroneously terminates the Contract or for default, the terminations shall be converted to a Termination for Convenience, and the Contractor shall have no further recourse of any nature for wrongful termination.

**87. Notice of Default-Opportunity to Cure**

In the event that the City determines that the Contractor is in default of their obligations under the Contract, the City may at its sole discretion notify the Contractor, specifying the basis for such default, and advising the Contractor that such default must be cured within a specified time frame or the Contract with the City may be terminated. The City is under no obligation to issue such notification. The City may grant an extension to the cure period if the City deems it appropriate and in the best interest of the City, without waiver of any of the City's rights hereunder. The City, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the City.

**88. Termination for Default**

If Contractor fails to comply with any term or condition of the Contract Documents, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder which is not cured within the time specified to cure the default if one has been granted by the City, the Director in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon any advances for which Work has not been performed, paid by the City to Contractor while Contractor was in default shall be immediately returned to the City. The Director may also suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved. Contractor understands and agrees that termination of this Contract under this Article shall not release Contractor from any obligation accruing prior to the effective date of termination.

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

- Contractor fails to obtain the insurance or bonding herein required by the Contract.
- Contractor fails to comply with any of its duties under the Contract Documents, with any terms or conditions set forth in this Contract, beyond any specified period allowed to cure such default.

- Contractor fails to commence the Work within the timeframes provided or contemplated herein, or fails to complete the Work in a timely manner as required by the Contract.

If this Contract is terminated for default and the City has satisfied its obligations under the Contract Documents the City is granted by the Contractor full use of the Work and any Work Product in connection with the City's completion and occupancy of the Project.

Where it has been determined that the Contractor has been erroneously terminated under this Article, such termination shall be deemed to have been occurred under Article 90, Termination for Convenience. The City in its sole discretion may terminate the Contract without providing the Contractor a written Notice to Cure.

## **89. Remedies in the Event of Termination for Default**

If a Termination for Default occurs, the Contractor and the bond provider, if applicable) shall be notified of the effective date of the termination and shall be liable for all damages resulting from the default, including but not limited to re-procurement costs and other direct damages

The Contractor shall stop Work as of the date of notification of the termination and immediately remove all labor, equipment and materials (not owned or paid for by the City) from the Work Site. The City assumes no liability for the Contractor's failure to remove such items from the Project(s) site(s) as required.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

As an alternative to termination, the City may bring suit or proceedings for specific performance or for an injunction.

## **90. Termination for Convenience**

In addition to cancellation or termination as otherwise provided for in the Contract, the City may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such written notice shall state the date upon which Contractor shall cease all Work under the Contract and vacate the Project(s) site(s).

The Contractor shall, upon receipt of such notice, unless otherwise directed by the City:

- Stop all Work on the Project(s) on the date specified in the notice ("the Effective Date");
- Take such action as may be necessary for the protection and preservation of the City's materials and property;
- Cancel all cancelable orders for materials and equipment;
- Assign to the City and deliver to the site, or any other location specified by the Project Manager, any non-cancelable orders for materials and equipment that can not otherwise be used except for Work under the Contract and have been specifically fabricated for the sole purpose of the Work and not incorporated in the Work;
- Take no action that shall increase the amounts payable by the City under the Contract Documents; and
- Take reasonable measures to mitigate the City's liability under the Contract Documents.
- All charts, sketches, studies, drawings, reports and other documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the City. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the City.

In the event that the City exercises its right to terminate the Contract pursuant to the Contract Documents, the City will pay the Contractor:

- For the actual cost or the fair and reasonable value, whichever is less, of (1) the portion of the Project(s) completed in accordance with the Contract through the completion date, and (2) non-cancelable material(s) and equipment that is not of any use to the City except in the performance of the Contract, and has been specifically fabricated for the sole purpose of the Contract but not incorporated in the Work; and
- To the extent practical, the fair and reasonable value shall be based on the price established as a result of the Contract. In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract.
- The amount due hereunder may be offset by all payments made to the Contractor.
- All payments pursuant to this Article shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of the termination including, but not limited to, claims for lost profits, overhead costs or consequential damages as a result of a Termination for Convenience. Further, the City may deduct or set off against any sums due and payable under this Article any claims it may have against the Contractor.
- Contractor shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.
- All payments made under the Contract are subject to audit

Upon the City's payment in full of the amounts due the Contractor under this Article the Contractor grants the City full use of the Work and any Work Product to complete the Project and subsequently occupy the Project.

#### **91. Resolution of Disputes**

Contractor understands and agrees that all disputes between it and the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner.

The initial step shall be for the Contractor to notify the Project Manager in writing of the claim or dispute and submit a copy to the City of Miami personnel identified in Section 2, General Terms and Conditions, Article 4, Notices.

Should the Contractor and the Project Manager fail to resolve the dispute the Contractor shall submit their dispute in writing, with all supporting documentation, to the Assistant Director-Contracts, as identified in Article 4, Notices. Upon receipt of said notification the Assistant Director-Contracts shall review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Assistant Director-Contracts fail to resolve the dispute the Contractor shall submit their dispute in writing within five (5) calendar days to the Director. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Director shall review the issues relative to the claim or dispute and issue a written finding.

Contractor must submit any further appeal in writing within five (5) calendar days to the City Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Contractor. Appeal to the City Manager for his/her resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the amount of compensation hereunder exceed \$100,000, the City Manager's decision shall be approved or disapproved by the City Commission. Contractor shall not be entitled to seek judicial relief unless:

- (i) it has first received City Manager's written decision, approved by the City Commission if applicable, or

- (ii) a period of sixty (60) days has expired after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where City Manager's decision is subject to City Commission for approval; or
- (iii) City has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the City Manager.

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price or Contract Time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

**92. Mediation-Waiver of Jury Trial**

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the construction of a Project(s), and/or following the completion of the Project(s), the parties to this Contract agree all unresolved disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will share the costs of a certified Mediator on a 50/50 basis. The Contractor agrees to include such similar contract provisions with all Subcontractors retained for the Work, thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Contract.

**93. City May Avail Itself of All Remedies**

The City may avail itself of each and every remedy herein specifically given to it now or existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The City's rights and remedies as set forth in the Contract Documents are not exclusive and are in addition to any other rights and remedies in law or in equity.

**94. Permits, Licenses and Impact Fees**

All applicable permit fees, including those assessed by the City, are the responsibility of the Contractor. That includes also any other permit fees not directly related to the actual construction of the Project(s), including but not limited to, licenses, permits and fees, such as Permits for dumpsters, job trailers, etc., which may be required by Miami-Dade County, the State of Florida, or other governmental entities.

Except as otherwise provided within the Contract Documents, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to the Contract Documents shall be secured and paid for

by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project(s) for whom a Certificate of Competency is required.

Impact fees levied by the City and/or Miami-Dade County shall be paid by Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the public entity as evidenced by an invoice or other acceptable documentation issued by the public entity.

Fees for Permits **REQUIRED BY THE CITY AND PAYABLE TO THE CITY** (e.g. Building Department's Fees such as, Master Permit, Major Trades, Mechanical, Electrical, and Plumbing Fees; Public Works Fees, such as Line and Grade, Excavation, Dewatering and NPDES Fees, and Zoning Department's Fees) by virtue of this construction as part of the Contract shall be reimbursed to the Contractor by the City through an Allowance Account set for herein, evidenced by an invoice or other acceptable documentation issued by the public entity.

Permit Fee reimbursement to Contractor shall be for the actual amount and in no event shall include profit or overhead of Contractor.

Permit fees related the Contractor's operations (e.g., permits for dumpsters, job trailers, etc.) are not reimbursable.

#### **95. Compliance with Applicable Laws**

The Contractor shall comply with the most recent editions and requirements of all applicable laws, rules, regulations, building, environmental, technical and construction codes of the Federal government, the State of Florida, the County, and the City.

Vendor/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to confirm the employment eligibility of all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida and all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Department.

The attention of the Contractor is directed to the requirements of the Florida Building Code and the Codes of Miami-Dade County and the City of Miami, Florida, governing the qualifications for Contractor and Sub-Contractor doing business anywhere in the City.

#### **96. Independent Contractor**

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the City for any right or privilege applicable to an officer or employee of the City, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

The Contractor's staff shall not be employees of the City, and the Contractor alone shall be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Contract shall impose any liability or duty on the City on account of the Contractor's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Contractor as a Subcontractor, expert, consultant, independent contractors, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to: unemployment insurance; worker's compensation and anti-discrimination, or workplace legislation of any kind.



The Contractor hereby agrees to indemnify and hold harmless the City against any such liabilities, even if they arise from actions directed or taken by the City.

**97. Third Party Beneficiaries**

Neither Contractor nor City intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract

**98. Successors and Assigns**

The performance of this Contract shall not be transferred, pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the written consent of the City. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior City approval.

Any transference without City approval shall be cause for the City to nullify this Contract. Any assignment without the City's consent shall be null and void. The Contractor shall have no recourse from such cancellation. The City may require bonding, other security, certified financial statements and tax returns from any proposed assignee and the execution of an assignment/ assumption agreement in a form satisfactory to the City Attorney as a condition precedent to considering approval of an assignment.

The Contractor and the City each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Contract and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

**99. Materiality and Waiver of Breach**

City and Contractor agree that each requirement, duty, and obligation set forth in this Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof.

City's failure to enforce any provision of the Contract Documents shall not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Contract Documents.

**100. Severability**

In the event the any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Contract, and the remainder of the Contract Documents shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

**101. Applicable Law and Venue of Litigation**

This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**102. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless pre-approved by FDOT and contained in a written document prepared with the same or similar formality as this Contract and executed by the City Manager, Director or designee.

**103. Entire Agreement**

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the City and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

**104. Nondiscrimination, Equal Employment Opportunity, Affirmative Action, and Americans with Disabilities Act**

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Contractor's decisions regarding the delivery of services under the Contract Documents shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

Contractor has an EEO policy that prohibits discrimination and provides for affirmative action in employment practices. The Contractor shall adopt the following statement as his operating policy:

“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, pre-apprenticeship, and/or on-the-job training.”

Contractor agrees to apply a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur.

Contractor will have a designated EEO Officer who has the responsibility and authority to administer the Contractor's EEO program.

All of the Contractor's employees who have an active role in the hiring, supervision, or advancement of employees shall be made aware of and instructed to implement the EEO policy. In addition, employees, including applicants and potential employees, will be informed of the Contractor's EEO policy through posted notices, posters, handbooks, and employee meetings.

The Contractor shall not discriminate in his recruitment practices and should make an effort to identify sources of potential minority and women employees.

The Contractor is required to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The Contractor is to promptly investigate all alleged discrimination complaints.

The Contractor is required to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women, and applicants, through such programs.

The EEO policy also pertains to Contractor's selection of Subcontractors, including material suppliers and equipment leasing companies.

Records that document compliance with the EEO policy shall be prepared and retained by the Contractor for a period of three years after project completion. These records should include the numbers of minority, women, and non-minority employees in each work classification on the project; and the progress and effort being made to increase the employment opportunities for minorities and women.

The Contractor is required to submit an annual EEO report, attached, to the STA (Supervisory Trial Attorney) each July, for the duration of the project. If the project contains on-the-job training (OJT), this information is also required to be collected and reported.

The Contractor further agrees to comply with all applicable provisions of Florida Executive order 11246, as amended, referenced on page 81 and incorporated herein.

The Certification of Compliance with EEO Provisions on Federal Aid Contracts Form as set forth in Attachments section shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered Federal-aid highway construction subcontract.

In order to obtain information required by 48 CFR, chapter 1, Sec. 22.804-2 (c), the aforementioned requirement along with a completed W-9 shall be included at the end of the bid schedule in the Bid and Contract assembly.

**105. Evaluation**

Contractor acknowledges that upon completion of the of the Work under the Contract Documents and/or at any other time deemed appropriate by the City a performance evaluation report will be completed by the City. A copy of each performance evaluation shall also be forwarded to the Contractor. The performance evaluations will be kept in City files for evaluation on future solicitations.

**106. Commodities manufactured, grown, or produced in the City of Miami, Miami - Dade County and the State of Florida**

N/A for projects receiving federal aid.

**107. Royalties and Patents**

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

**108. Continuation of the Work**

Any Work that commences prior to and will extend beyond the expiration date of the current Contract period shall, unless terminated by mutual written agreement between the City and the involved Contractor, continue until completion at the same prices, terms and conditions.

**109. Review of Records**

City shall have the right to inspect and copy, at City's expense, the books and records and accounts of Contractor which relate in any way to the Project(s), and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to a Project(s) and to any claim for additional compensation made by Contractor including but not limited to all payroll records, invoices for materials, and books of accounts. Such records shall conform to Generally Accepted Accounting Principles requirements (GAAP), and shall only address those transactions related to the Contract.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with such statute. Otherwise Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project(s) and to any claim for a period of five (5) years following Final Completion of the Project(s).

Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost, to the City all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; (5) All electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

Contractors shall develop the proper forms and reports acceptable to the City for the administration and management of the Contract Documents.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DIVISION OF PUBLIC RECORDS AT (305) 416-1800, VIA EMAIL AT [PUBLICRECORDS@MIAMIGOV.COM](mailto:PUBLICRECORDS@MIAMIGOV.COM), OR REGULAR MAIL AT CITY OF MIAMI OFFICE OF THE CITY ATTORNEY, 444 SW 2ND AVENUE, 9TH FL, MIAMI, FL 33130. THE CONTRACTOR MAY ALSO CONTACT THE RECORDS CUSTODIAN AT THE CITY OF MIAMI DEPARTMENT WHO IS ADMINISTERING THIS CONTRACT.**

**110. No Interest**

Any monies not paid by City when claimed to be due to Contractor under the Contract Documents, including, but not limited to, any and all claims for damages of any type, shall not be subject to interest including, but not limited to prejudgment interest. However, the provisions of Section 218.74(4), Florida Statutes as such relates to the payment of interest, shall apply to valid and proper invoices.

**111. Payments Related to Guaranteed Obligations**

The City may withhold from any payments to be made such sums as may reasonably be necessary to ensure completion of the Project(s) with respect to defective Work, equipment or materials which may be identified by the Project Manager.

The City may deduct from any payment due the Contractor an amount equal to its cost incurred on account of the Contractor's failure to fully perform its obligations under the Contract.

The Project Manager, prior to withholding or deducting any monies hereunder, shall give the Contractor notice of the defective Work, equipment or material and the basis for the withholding or deduction.

Upon the Project Manager's determination that the Contractor has fulfilled its obligations, the City will pay the Contractor any monies owed, subject to Contractor's submission of, or compliance with, any remaining documentation or obligation, as the case may be, in accordance with the Contract Documents

**112. Consent of City Required for Subletting or Assignment**

If the Contractor assigns, transfers, sublets or otherwise disposes of the Contract or its right, title or interest in or to the same or any part thereof without the previous consent in writing of FDOT and the City, such action shall be an Event of Default. Nothing herein shall either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

**113. Agreement Limiting Time in Which to Bring Action Against the City**

In the event the Contractor may be deemed to have a cause of action against the City, no action shall lie or be maintained by the Contractor against the City upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the City or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Contract, or if final payment has not been issued within six (6) months of substantial completion of the Work or upon any claim relating to monies required to be retained for any period after the issuance of the said certificate, unless such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract Documents, or if the Contract is terminated or declared abandoned under the provisions of the Contract unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the City.

**114. Defense of Claims**

Should any claim be made or any legal action brought in any way relating hereto or to the Work hereunder, except as expressly provided herein, the Contractor shall diligently render to the City, after additional compensation is mutually agreed upon, any and all assistance which the City may require of the Contractor.

**115. Contingency Clause**

Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

**116. Mutual Obligations**

This document, change order, field directive, and written clarifications issued under the Contract, and the Contractor's submittals, shall constitute the Contract Documents between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by their duly authorized representatives.

Nothing in the Contract shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

In those situations, where the Contract Documents imposes an indemnity obligation on the Contractor, the City, may at its expense, elect to participate in the defense of the claim if the City should so choose. Furthermore, the City may, at its own expense, defend or settle any such claim if the Contractor fails to diligently defend such claim, and thereafter seek indemnity for such cost from the Contractor.

**117. Contract Extension**

The City reserves the right to exercise its option to extend the Contract for up to ninety (90) calendar days beyond the original Contract period. In such event, the City will notify the Contractors in writing of such extensions.

**118. Non-Exclusivity**

It is the intent of the City to enter into a Contract with all successful Bidders that will satisfy its needs as described herein. However, the City reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to: award of other contracts, use of any contractor, or perform the Work with its own employees.

**119. Nature of the Agreement**

The Contractor shall provide the services set forth in the Contract Documents. The Contractor shall provide full and prompt cooperation with the City in all aspects of the Work to be performed.

The Contractor acknowledges that the Contract Documents require the performance of all things necessary for or incidental to the effective management and performance of a Project(s). All things not expressly mentioned in the Contract Documents, but necessary to carrying out its intent are required by the Contract Documents, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

The Contractor shall furnish all labor, materials, tools, supplies and other items required for the completion of the Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.

**120. Contract Documents Contains all Terms**

The Contract Documents and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Contract Documents shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**121. Survival**

The parties acknowledge that any of the obligations in the Contract Documents will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under the Contract, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration thereof.

**122. Compliance with Federal Endangered Species Act and other Wildlife Regulations**

The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the

Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed in the Plans or in permits as identified in FDOT Section 7-2.1. These guidelines are posted at the following URL address:

<http://www.dot.state.fl.us/programmanagement/Implemented/URLinSpecs/files/endangeredwildlifeguidelines.pdf>

**123. Compliance with Section 4(f) of the USDOT Act**

Section 4(f) of the USDOT Act prohibits the U. S. Secretary of Transportation from approving a project which requires the use of publicly owned land of a public park, recreation area or a wildlife and waterfowl refuge, or of any historic site of national, state, or local significance unless there is no prudent or feasible alternative to using that land and the program or project includes all possible planning to minimize the harm to the site resulting from the use. Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources Survey discussed in 120-6.2). If such a site is proposed, notify the Engineer and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county or city map showing the site location and including the access route and the name of the property. It is the Contractor's responsibility to provide justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Provide this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

## Section 3 - Supplemental Terms and Conditions

This section is issued as supplemental information to the Bidding and Contractual Documents, and hereby made a part of the Contract Documents and taken into account in preparing the bid on the referenced project. All requirements of the documents not modified herein will remain in full force and effect as originally set forth. The following supplemental to the specifications in this section and acknowledge receipt thereof in the space provided on the bid form.

### 1. **Contract Time and Hours**

The Contractor shall furnish all labor, materials, equipment, tools, services, and incidentals to complete all Work at a rate of progress that will ensure completion of the Work within the Contract Time.

**The Contractor shall have one hundred twenty (120) calendar days to achieve Substantial Completion from the date that the Notice to Proceed is issued, and an additional ninety (90) calendar days for Final Completion of the Contract.**

Work shall be performed Monday through Friday from 8:00 am to 6:00 pm. Any Work to be performed outside of these times must be requested in writing to the Project Manager 48 hours prior to the requested change. The Project Manager will notify the Contractor in writing of any changes in approved Work hours.

### 2. **LEED Certification (Not Applicable)**

There are no LEED Certification or requirements associated with this Project.

### 3. **Progress Payments**

LAP FDOT Section 9 Measurement and Payment shall apply to this Article. Where provisions of codes or standards are in conflict, the more restrictive or higher quality shall govern. Contractor may make application for payment for Work completed during the Project(s) at intervals of not more than once a month or upon completion and Final Acceptance of the Work. All applications shall be submitted in triplicate and the Contractor shall only use the City's most current Contractor Payment Requisition Form. This form is available on the CIP webpage. Where the time frame for completion of the Work is less than or equal to one month or a Schedule of Values is not required, the Contractor shall submit the appropriate documentation as defined below. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated progress schedule as required by Section 3 - Supplemental Terms and Conditions, Article 5, Schedule of Values, and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the Project Manager. Each application for payment shall be submitted in triplicate for approval. City shall make payment to Contractor within thirty (30) days' after approval of Contractor's application for payment.

### 4. **Liquidated Damages**

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract Documents or any approved extension of time. Where the Contractor fails to do so, the Contractor shall pay to the City liquidated damages as follows. In the event of a delay in completion beyond the timeframe set forth in the Contract Documents for Substantial Completion or Final Completion, the Contractor shall pay to the City for each and every calendar day of unexcused delay, the daily charge per calendar day corresponding to the Original Contract Amount as specified in LAP FDOT Section 8-10.2 "Amount of Liquidated Damages", which is hereby incorporated into this contract, upon not as a penalty but as liquidated damages. The Contractor will be notified of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the applicable Contract Documents.



The City shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the City. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the City, the Contractor shall pay the difference upon demand by the City. Should the Contractor fail to compensate the City for any liquidated damages, the City shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other City contract until such indebtedness is paid in full to the City.

The City shall notify the Contractor that it is incurring liquidated damages.

## **5. Schedule of Values**

The Contractor must submit three copies of a Schedule of Values, which must be submitted within ten (10) calendar days of the issuance of the Notice of Award. The Schedule of Values shall indicate a complete breakdown of labor and material of all categories of Work on the Project. Contractor's overhead and profit should be as separate line items. Each line item shall be identified with the number and title of the major specification section or major components of the items. The Project Manager may require further breakdown after review of the Contractor's submittal. The City reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the Schedule of Values. The combined total value for mobilization under the Schedules of Values shall not exceed 5% of the value of the Contract.

The approved schedule of values shall be updated through the submittal of the City's Contractor Payment Application Form.

## **6. Project Schedules**

Contractor shall submit a proposed Project schedule ("Schedule") as follows:

- a. Schedule identifying all tasks within the critical path. The proposed Project schedule shall be submitted within ten (10) calendar days of the Notice of Award and such submittal shall be subject to the Project Manager and Consultant's review. Subsequent to such review of said Schedule the Contractor shall establish said schedule as the baseline Schedule.
- b. The Schedule shall be prepared in the form of a horizontal bar chart with separate horizontal bars for each design task, construction task in the critical path in chronological order. Provide horizontal time scale in weeks from the start of construction and identify the first work day of each month. Identify listings of any major equipment installation milestones.
- c. All updates of Schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application. An updated Schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract Time for completion. Failure to submit such Schedules shall result in the rejection of any submitted payment application.
- d. All Schedules shall be prepared in Microsoft Project 2003 or earlier unless otherwise approved by the Project Manager. At the time of submission of Schedules, Contractor shall submit a hard copy as well as an electronic version. Such electronic version shall not be submitted in a .pdf format and shall be capable of being incorporated into the City's master Project schedule.
- e. Subsequent to review of the initial Schedule submission the Contractor shall establish the reviewed Schedule as the "Baseline Schedule". Contractor shall then prepare and submit all updates to the Schedules utilizing the tracking mode within Microsoft Project.

At a minimum the contents of the Baseline Schedule shall show or indicate the following:

- a. Complete sequence of design by activity reflecting the Subcontractor responsible for the activity.
- b. Complete sequence of construction by activity reflecting the Contractor or Subcontractor(s) responsible for each activity
- c. Dates for the beginning and completion of each major element of design and construction in no more than a two-week incremental scale.
- d. Items of work that must be accomplished to achieve substantial completion.
  - 1). Major disciplines or trades of work
  - 2). Filter downtime
  - 3). Time required for Contractor's submittals, fabrication and deliveries.
  - 4). Time required by Contractor and the City to review all submittals.
  - 5). Time required by City to support any pre-operational and start-up testing.
  - 6). Time required for the relocation of utilities, if required.
  - 7). Activities performed by Contractor.
- e. Percentage of completion for each item as of the date the schedule was prepared.
- f. Dates for Contractor's submittals.
- g. Dates for any required City-furnished materials or equipment.
- h. Dates accepted submittals will be required from the City.

In addition, the Contractor shall provide:

- a. Provide a list of all long lead items and their anticipated dates of delivery (equipment, materials, etc.) Monthly updates shall reflect actual versus projected, and any revised projections
- b. Provide a projected dollar cash flow spend down for each month of construction. Monthly updates shall reflect any change orders as well as actual versus projected, and any revised projections.

## **7. Release of Liens/Subcontractor's Statement of Satisfaction**

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project(s) or not, will pass to the City upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project(s), subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor shall, beginning with the second request for payment, attach a Partial Release of Lien/Subcontractor's Statement of Satisfaction for each application for payment. Failure to submit such documentation may delay payments. The City may, in its sole discretion withhold payments for Work performed by Subcontractor where no release of lien has been submitted. The Contractor shall submit with the final payment request, for any Project(s) where Subcontractors have performed Work, a Final Release of Lien/Subcontractor's Statement of Satisfaction for each Subcontractor marked as a final. Failure to submit such documentation will result in delay in payment or the City withholding from the final payment such funds as necessary to satisfy any Subcontractor claims.

Where the Contractor has submitted a Performance/Payment Bond the Contractor may, in lieu of the Release of Lien/Subcontractor's Statement of Satisfaction, submit a Consent of Surety to Requisition Payment.

**8. Progress Meetings**

The City shall conduct a pre-construction conference prior to the commencement of the Work. Contractor shall hold progress and coordination meetings as required by the Project Manager or Engineer, to provide for the timely completion of the Work.

Contractor shall arrange and conduct regular bi-weekly job site Project status meetings with the Project Manager and/or Consultant. Contractor shall use the job site meetings as a tool for the pre-planning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Contractor shall identify the party or parties responsible for following up on any problems, delay items or questions, and Contractor shall note the action to be taken by such party or parties. Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Contractor shall attempt to obtain from all present any potential problems or delaying event known to them for appropriate attention and resolution. Contractor shall be responsible for keeping minutes of the meeting and distribution of the minutes to all parties in attendance.

The Contractor shall arrange for the participation of its Subcontractors and/or vendors when the Project Manager requires their presence.

The Contractor shall maintain minutes of the meeting and distribute copies of the minutes to all parties in attendance. The Contractor shall prepare and distribute to Project Manager and the Consultant an updated two-week look-ahead schedule of construction activities and submittals.

**9. Request for Information**

The Contractor shall submit a Request for Information (RFI) where the Contractor believes that the Contract Document's specifications or drawings are unclear or conflict. All requests must be submitted in a manner that clearly identifies the drawing and/or specification section where clarification or interpretation is being requested. As part of the RFI, Contractor shall include its recommendation for resolution. The Architect and City shall respond in writing.

**10. Project Site Facilities**

The Contractor shall arrange for all Project(s) Site(s) facilities as may be necessary to enable the Project Manager or Consultant to perform their respective duties and to accommodate any representatives of the City which the City may choose to have present at the Project(s).

Contractor's, Subcontractor's, supplier's, material person's personnel shall not use the City restrooms that may be available at the Project(s) Site(s) without the prior consent of the manager of the facility or the Project Manager where there is no manager of a facility. The Contractor shall provide and maintain at his own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements including Chapter 46 of the Building Code and regulations of the State of Florida Department of Health and Rehabilitative Services or Dade County Health Department. The Contractor, his employees or his Sub-Contractors shall commit no public nuisance or use any facilities that have not been specifically provided for use by the Contractor.

The Contractor shall furnish an adequate supply of drinking water for its, and its Sub-Contractors' employees.

There shall be adequate provisions made by the Contractor to ensure all disposable materials are properly disposed of and do not create a nuisance to the City or the public. The location of the temporary facilities shall be subject to the approval of the Project Manager.

## **11. Temporary Facilities, Utilities, and Construction**

Contractor is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility, or those that are necessary for the performance of the Work. Contractor shall make all arrangements with the local utility companies. The Contractor shall also be responsible for furnishing all materials and equipment necessary for the installation and maintenance of any temporary utilities. The Project Manager may authorize the use of existing utilities. Such decision will be made at the sole discretion of the Project Manager and the City.

Contractor shall furnish, install and maintain temporary facilities required for construction, and shall remove them upon completion of the Work. All facilities shall comply with the respective federal, state and local codes and regulations and with utility company requirements. Materials for temporary facilities may be new or used, but must be adequate in capacity for the required usage, must not create unsafe conditions, and must not violate requirements of applicable codes and standards.

The Contractor must pay for all utility costs associated with new lines, new hook ups, new utility accounts, and so forth which were necessitated by the Project itself. Contractor shall pay for all changes, fees, costs or other impositions for utilities, including without limitations, electric, water, sewer, telecommunications and other utilities of whatever nature arising from the Project of the Work herein defined.

The Contractor shall be required to obtain all necessary permits required for any Project(s) site facilities and utilities. Contractor shall also be responsible to maintain such facilities in a safe and working condition. Contractor shall be responsible for payment for all fees and charges for the installation and use of all temporary facilities and utilities.

All such facilities and utilities remain the property of the Contractor and the Contractor shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

Temporary fences: If, during the course of the Work, it is necessary to remove or disturb any fencing, the Contractor shall, at his own expense, provide a suitable temporary fence which shall be maintained until the permanent fence is replaced. The Project Manager will be solely responsible for the determination of the necessity for providing a temporary fence and the type of temporary fence to be used.

Responsibility for Temporary Structures: In accepting this Contract, the Contractor assumes full responsibility for the sufficiency and safety of all temporary structures or work and for any damage which may result from their failure or their improper construction, maintenance or operation and will indemnify and save harmless the City from all claims, suits or actions and damages or costs of every description arising by reason of failure to comply with the above provisions.

## **12. Field Layout of the Work and Record Drawings for Drainage Projects**

The Contractor through the services of a State of Florida Registered Professional Surveyor and Mapper (P.S.M.), shall establish the line and benchmarks and other reference points for the installation of the pipeline or structure

For pipelines, this will consist of establishing all points of bend (but not necessarily bevel pipe unless in close proximity to other facilities), valves, tees, crosses and other stations not more than 100 feet apart along the proposed centerline of the pipe, or along a stationed offset line as shown on the Plans, marked by a nail in a metal cap if in pavement, with the station painted nearby or by a nail in the top of a wooden stake driven flush with the ground with the station marked on a flag stake nearby, if not in pavement.

For structures, this will consist of base lines, stakes at corners, centers and center lines, auxiliary lines and a bench mark from which to establish the elevations.

The Contractor shall make his equipment and men available to the Inspector for spot-checking the accuracy of the Work. The Project Manager shall require the Work to be brought within the tolerances specified elsewhere before backfill is placed or the construction is otherwise hidden.

The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, maintenance access structures, hand holes, fittings and other Work and shall prepare record or "as-built" drawings of the same which are signed and sealed by a State of Florida Registered Professional Surveyor and Mapper (P.S.M.). Contractor shall deliver these records in good order to Project Manager as the Work is completed. The Contractor shall supply the Consultant with a copy of the Registered Land Surveyor's layout of the Work immediately upon its availability to his own forces. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to Project Manager prior to, and as a condition of, final payment.

During the entire construction operation, the Contractor shall retain the services of a State of Florida Registered Professional Surveyor and Mapper (P.S.M.) who shall maintain records of the installation, including all deviations from the plans and specifications by obtaining "As-built" dimensions and elevations. The surveyor shall prepare record as-built drawings showing correctly and accurately all changes and deviations made during construction, including approved construction variances to reflect the Work as it was actually constructed. "As-Built" drawings shall be submitted to the City on a monthly basis.

#### Recording of Project Record

- Record all information for pipeline projects and on-site projects concurrently with construction progress.
- Do not conceal any work until as-built information is recorded by the Contractor and the City.
- All locations for future connections or tie-ins shall be left unburied and uncovered until the City's surveying forces obtain and record the as-built information. This is in addition to the Contractor's recorded information.
- Restrained pipe, end line valves, thrust blocks need to be left uncovered for the last complete length. Inline valves and tees shall be left exposed for 1 length on both sides plus the face end. Record the elevation, deviation from horizontal and vertical alignment and the inclination for these items.
- Maintain records of all pipeline Project and on-site Project deviations from Drawings and Specifications by a Florida Registered Professional Surveyor and Mapper (P.S.M.).
- For Pipe Installation in All Pipeline Projects and On-site Projects: During entire construction operation retain the services of a State of Florida Registered Land Surveyor (FRLS) who shall maintain records of the installation, including all deviations from Drawings and Specifications.
- (FRLS) shall record as-built dimensions and elevations every twenty-five feet (25') or portion thereof along pipeline and at every abrupt change in direction of the new line.
- (FRLS) shall record locations and elevations for each valve, fitting, service line, fire hydrant, water sampling point, and also for above ground piping and other appurtenances along the pipeline. Specific locations and elevation of equipment, the buildings and miscellaneous items installed inside them shall be recorded as applicable.
- Contractor's FRLS shall prepare as-built record drawings showing correctly and accurately the installation, embracing all changes and deviations made during

construction, including all approved construction variances, to reflect the work as it was constructed.

- Record Drawings shall be prepared on 4-mil Mylar as specified hereinafter. Record Drawings and three (3) blue line copies shall be signed and sealed by the Surveyor and shall be submitted to the City for the Project Manager's or Consultant's review within ten (10) calendar days following the completion date of successful pressure testing of all mains and appurtenances under the Contract Documents
- If the Consultant determines that the Drawings are not acceptable, they will be returned to the Contractor with a cover letter noting the deficiencies and/or reasons for the disapproval. Contractor shall have ten (10) calendar days to correct all exceptions taken by the Project Manager and resubmit as-built record drawings to the Consultant for final acceptance.

Prior to, and as a condition precedent to Final Payment, Contractor shall submit to City, Contractor's record drawings or as-built drawings acceptable to Project Manager.

### **13. Survey Work for Drainage Projects**

The Contractor shall retain or employ a FRLS to lay out all storm sewer construction and provide final measurements.

At the Project pre-construction meeting, to be attended by the Contractor's FRLS, the Contractor will be provided a packet of information, from the City, showing the format to be utilized. The Contractor is advised that the survey work, including required final measurements, shall be according to City Standards and are an integral part of the Project. The Project shall not be considered complete until the final measurements are approved by the City.

Layout is to be under the supervision of the FRLS. The center line of catch basins and an offset line parallel with the center line of the pipe will be marked by nails and discs at intervals of no more than fifty feet (50'). Distances between manholes will be accurate within 0.10 foot and elevations of the offset points will be determined with an accuracy of  $\pm 0.03$  foot.

Offset points are to be painted with good quality traffic paint with the distance from the catch basin and the low invert. This information is to be shown in the approved field book and on a cut sheet form provided by the City. These cut sheets shall be reviewed by the Consultant to ensure that City standards are being met. Field books will become the property of the City.

All notes will show the relationship of the installations to the City of Miami's monument line. All elevations are to the City of Miami Datum.

The final measurements will include accurate horizontal and vertical location of all construction. This includes, but is not limited to grate, invert and bottom elevations of catch basins and size and type of all pipe, asphalt overlay, and elevation of ground or sidewalk above exfiltration systems.

All books shall contain a front index referencing both street location and catch basin numbers. These notes are to become the property of the City after certification as to accuracy by a FRLS. Staking and final survey notes shall be cross referenced each to the other.

The FRLS works for the Contractor but shall be available to answer any questions the City may have. All costs for survey work will be included in the bid price.

### **14. Security**

The site where the Work is to be performed may not be a secure site and the public may have access to the site. The Contractor shall have sole responsibility for the security of all Work materials, tools, equipment and Work at the Project(s) site. The City shall not be liable for any damage or loss to such materials, tools, equipment and Work and the Contractor shall be responsible for the repair or replacement of all Work such materials, tools, and equipment.

## 15. **Construction Signage**

Contractor is expected to furnish and install a minimum of two Project signs in addition to construction related signs such as warning signs.

The City shall provide the Contractor the wording and layout for the signs at the pre-construction conference. The Contractor shall furnish the two City signs at the Project(s) Site(s) as follows:

- The first sign shall be four feet (4') wide and eight (8') feet high and constructed of pressure sensitive two (2) mil cast vinyl overmounted with three (3) mil mylar and mounted to one (1) MDO with painted back. The sign shall be mounted on four (4) inch square wood or perforated "U" channel metal posts painted white, and be readable at eye level. The colors to be used on the sign are as follows: the background shall be white with blue lettering; the seal shall be white and gold with blue lettering form.
- The second sign shall reflect other funding sources for the Project and shall reflect the Project information. The sign shall be four feet (4') wide by eight feet (8') high by ¾ inch (thick) exterior plywood, suitably mounted and readable at eye level. The colors shall be blue and white. The background shall be white and all lettering shall be blue Helvetica. All paint shall be rated outdoor enamel. The City will provide the City Seal in decal form.
- The Contractor shall also post appropriate construction site warning signs at the Work Site. Such signs shall be posted to warn pedestrian and vehicle traffic. Signage shall also be placed waterside to alert boater to the construction zone, requiring idle speed and a minimum clearance distance. Contractor shall provide drawings for the signage, which shall be subject to approval by the Consultant.
- The Project Manager and the City shall approve the locations for all signage.

## 16. **Construction Photographs**

Prior to commencement of the Work the Contractor will take digital photographs to document existing conditions and submit copies as required herein prior to the commencement of Work. Contractor shall submit with each application for payment photographs that accurately reflect the progress of all aspects the Work. The number of photographs to be taken will be based on the magnitude of Work being performed. Contractor shall submit one copy of each photograph in print and digitally. The photographs shall be printed on 8"X10" high resolution glossy commercial grade and weight color photographic print paper. Each photograph shall be imprinted on its face with the title of the Project, the date, and time the picture was taken. Digital photographs shall be taken using .jpeg format and will be submitted on a CD-ROM clearly identifying the name of the Project, the name of the Contractor, and the timeframe in which the pictures were taken. Initial set up prints, unless otherwise allowed by the Project Manager will be submitted in a three ring binder with each picture protected by a clear plastic sleeve. Subsequent prints are to be submitted in clear plastic sleeves that can be added to the binder. The three ring binder shall be of such size to be able to hold all print pictures.

## 17. **Buy America Requirements**

Contractor agrees to comply with all applicable provisions of LAP FDOT's Section 6- 5.2 herein and 23 CFR 635.410, as amended.

## 18. **Contractor Purchased Equipment for State or Local Ownership**

When a Contractor purchases equipment to adequately meet the construction engineering (CE) requirements of a Federal-aid project, the equipment which is purchased by the

construction Contractor is not permitted to be transferred to the State or City for ownership. Contractor shall also not purchase equipment utilizing Project funds for use and ownership by the City or State.

**19. Equipment Rental Rates**

LAP FDOT Section 9-5.6 “Certification of Payment to Subcontractors” and other applicable sections shall apply to this Article. Whenever a code of standard is in conflict, the more conservative descriptive applies. When equipment is to be rented, the following guidelines apply and Contractor agrees to comply with these guidelines as laid out below:

The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of

- I. rental costs of comparable property, if any;
- II. market conditions in the area;
- III. the type, life expectancy, condition, and value of the property leased;
- IV. alternatives available; and
- V. other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the Contractor would be allowed if the Contractor retained title, computed based on the net book value of the asset on the date the Contractor becomes a lessee of the property adjusted for any gain or loss recognized.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs) provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the Contractor under common control that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed.

**20. Prohibition Against Convict Produced Materials**

Title 23 CFR PART 635 Section 117 is incorporated here and shall apply to this Contract.

TITLE 23--HIGHWAYS

CHAPTER I--FEDERAL HIGHW ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 635-CONSTRUCTION AND MAINTENANCE-Table of Contents

Subpart A-Contract Procedures  
Sec. 635.117 Labor and employment.

(a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the Contract or the start of work on force account until final acceptance of the work by the SHA unless it is labor performed by convicts who are on parole, supervised release, or probation.



(b) No procedures or requirements shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

(c) The selection of labor to be employed by the Contractor or any Federal-aid project shall be by the Contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended, which are incorporated herein

(d) Pursuant to 23 U.S.C. 140(d), it is permissible for SHA's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a Contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

**21. FHWA-1273 / Required Contract Provisions for Federal-Aid Construction Contracts and FDOT LAP Division 1 Specifications**

The provisions of FHWA-1273, attached to this contract as EXHIBIT 1273 and hereby made a part of the Contract Documents, are MANDATORY and MUST BE ADHERED TO FOR WORK UNDER THIS CONTRACT. LAP Divisions 1 Specifications (Off-System) are provided for use in LAP Specifications as needed are attached in this document and must be adhered to for work under this contract.

**22. Wage Rates for Federal-Aid Projects**

For this Contract, payment of predetermined minimum wages applies. The U.S. Department of Labor Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) **FL180221 03/16/2018 FL221**, as modified up through ten days prior to the opening of bids. Obtain the applicable General Decision(s) (Wage Tables) through the FDOT's website and ensure that employees receive the minimum wages applicable. You may, if applicable, refer to the Wage Table—current as of this Contract date—attached hereto on page 107, below, and incorporated herein.

Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed. When multiple wage tables are assigned to a Contract, general guidance of their use and examples of construction applicability is available on the Department's website. Contact the Department's Wage Rate Coordinator before bidding if there are still questions concerning the applicability

of multiple wage tables. The URL for obtaining the Wage Rate Decisions is [www.dot.state.fl.us/construction/wage.shtm](http://www.dot.state.fl.us/construction/wage.shtm). Contact the FDOT's Wage Rate Coordinator at (850) 414-4251 if the FDOT's Website cannot be accessed or there are questions.

Weekly payrolls must be submitted to the City's construction manager. They shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), as detailed above in section 19, except that full social security numbers and home addresses SHALL NOT be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). Where this paragraph conflicts with FHWA 1273 with regard to home addresses and social security numbers this paragraph shall prevail.

**23. Publicly-Owned Equipment**

In accordance with 23 CFR 635, publicly owned equipment **is not allowed for this contract**. It should not normally compete with privately owned equipment on a project to be let to contract.

**24. Public Agencies in Competition with the Private Sector**

The City reserves the right, before awarding a Contract, to require a Bidder to submit evidence of his/her qualification, as may be deemed necessary, and consider any evidence available to it of the financial, technical and other qualifications and abilities of the bidder. The Contract will be awarded only to a Bidder fully qualified to undertake the proposed work. All material or services must meet all applicable Federal, State and Local specifications and permit requirements. In accordance with 23 CFR 635.112(e), **no public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.**

**25. FDOT Specifications**

All work done must be completed using the LAP FDOT Specifications and the FDOT Big 4 Specifications for earthwork, concrete, asphalt and landscaping as attached in the Supplemental Information section of this document and is made part of this contract.

**26. On The Job Training Requirements**

Provisions for LAP Section 7-25 are attached with this contract and made part of this contract

**27. Owner Force Account Contracting**

Owner Force Account contracting is not allowed for this contract. The City does not allow the direct performance of highway construction work by its own resources of labor, equipment, materials and supplies furnished by the City and used under City's direct control.

**28. E-Verify - Mandatory Use**

Provision of the LAP FDOT Section 7-29 applies to this Article and is made part of this contract. Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

**SECTION 4**  
**BID FORM**

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

City of Miami, Florida  
Office of the City Clerk  
City Hall, 1<sup>st</sup> Floor  
3500 Pan American Drive  
Miami, Florida 33133-5504

---

The undersigned, as Bidder, hereby declares that the only persons interested in this Bid as principal are named herein and that no person other than herein mentioned has any interest in this bid or in the Contract to be entered into; that this Bid is made without connection with any other person, firm, or parties making a Bid; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder further declares that it has examined the Site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the Bids, as acknowledged below; and that it has satisfied itself about the Work to be performed; and that it has submitted the required Bid Guaranty; and all other required information with the Bid; and that this Bid is submitted voluntarily and willingly.

The Bidder agrees, if this Bid is accepted, to contract with the City, a municipal corporation of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project(s) entitled:

ITB No: 17-18-022

Title: Downtown Miami Signage and Wayfinding System

The Bidder also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total Bid price plus alternates, if any, and to furnish the required Certificate(s) of Insurance.

The undersigned further agrees that the Bid Guaranty accompanying the Bid shall be forfeited if Bidder fails to execute said Contract, or fails to furnish the required Performance Bond and Payment Bond or fails to furnish the required Certificate(s) of Insurance within fifteen (15) calendar days after being notified of the award of the Contract.

In the event of arithmetical errors, the Bidder agrees that these errors are errors which may be corrected by the City. Bidder agrees that any unit price listed in the Bid is to be multiplied by the stated quantity requirements in order to arrive at the total.

**BID FORM (Page 2 of 9)**

**Form SU must be submitted with Bidder's bid.** The SU Form can be found posted on the webpage with the bid documents.

The Bidder's Total Bid Construction Cost includes the total cost for the Work specified in this solicitation, consisting of furnishing all materials, labor, equipment, supervision, mobilization, overhead & profit required in accordance with the bid specifications.

Bidder's Bid Amount Includes the total cost for the Work specified in this solicitation, consisting of furnishing all materials, labor, equipment, permits, supervision, mobilization, overhead & profit required in accordance with the Bid Specifications.

**Scope of Work:** The Work consists of furnishing all materials, labor, and equipment necessary for installation of new vehicular, pedestrian and parking wayfinding signage, and improvements to the public right-of-way, such as the removal of repetitive and aging signs, and the installation of district gateway and destination signs.

**BID:**

**TOTAL BID CONSTRUCTION COST:** \$ \_\_\_\_\_

\$ \_\_\_\_\_

**Written Total Bid Construction Cost**

**Intentionally  
Left Blank**

**BID FORM (Page 3 of 9)**

**The spreadsheet with Unit Prices is required to be submitted within the Bid Submittal Forms.**

**Bidders must download the version of MS Excel Bid Form that is available for download at:**

<http://www.miamigov.com/MiamiCapital/NewBidsandProposals.html>

**Bidder’s Failure to submit the spreadsheet with Unit Prices may result in the Bid being deemed non-responsive. Bidder’s spreadsheet shall round all Bid prices to the second decimal.**

<b>ITB 17-18-022 - Downtown Miami Signage and Wayfinding System – FDOT LAP Project</b>						
<b>Line No.</b>	<b>Pay Item No.</b>	<b>Pay Item Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Cost</b>
1	1					
2	2					
3	3					
4	4					
5	5					
6	6					
7	7					
8	8					
9	9					
10	10					

SAMPLE FORM

<b>TOTAL</b>	
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**DIRECTIONS: COMPLETE PART I OR PART II, AS APPLICABLE, AS WELL AS PARTS III AND IV**

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**Part I:** Listed below are the dates of issue for each Addendum received in connection with this bid:

Addendum No. 1, Dated \_\_\_\_\_

Addendum No. 2, Dated \_\_\_\_\_

Addendum No. 3, Dated \_\_\_\_\_

Addendum No. 4, Dated \_\_\_\_\_

**Part II:** \_\_\_\_\_ No addenda was received in connection with this bid.

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**Part III: Certifications**

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The Bidder, by virtue of signing the Bid Form, affirms that the Bidder is aware of the following, and shall comply with all the stated requirements.

1. Non-Collusion

The undersigned Bidder certifies that the only persons interested in this bid are named herein; that no other person has any interest in this bid or in the Contract to which this bid pertains; that this bid is made without connection or arrangement with any other person. Bidder certifies that the selected independent third-party verifier will verify and certify compliance data and reports honestly and accurately.

2. Drug Free Workplace

The undersigned Bidder hereby certifies that it will provide a drug-free workplace program by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Bidder's workplace, and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Establishing a continuing drug-free awareness program to inform its employees about:

- (i) The dangers of drug abuse in the workplace;
- (ii) The Bidder's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and,
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Giving all employees engaged in performance of the Contract a copy of the statement required by subparagraph (1).

- (4) Giving all employees engaged in performance of the Contract a copy of the statement required by subparagraph (1);
- (5) Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered Contract, the employee shall:
  - (i) Abide by the terms of the statement; and,
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
- (6) Notifying the City in writing within ten (10) calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (7) Within thirty (30) calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and,
- (8) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs(1) through (7).

5. Lobbying

The undersigned Bidder certifies to the best of their knowledge and belief, 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been 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 375-030-34, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) This undersigned shall require that the language of this certification be included in the award documents for "All" sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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 pre-requisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure; and

\* Note: In these instances, "All" in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over \$100,000 (per QMB).

6. Debarment, Suspension and Other Responsibility Matters

The undersigned Bidder certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- (b) Have not, within a three-year period preceding this Bid, been convicted of, or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 6.b of this certification; and,
- (d) Have not, within a three-year period preceding this Bid, had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Bidder is unable to certify to any of the statements in this certification, such Bidder shall submit a written explanation to the City of Miami.

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**Part IV; Certification – Trench Safety Act**

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The undersigned Bidder, by virtue of signing the Bid Form, affirms that the Bidder is aware of the Trench Safety Act, and will comply with all applicable trench safety standards. Such assurance shall be legally binding on all persons employed by the Bidder and subcontractors.

The Bidder is also obligated to identify the anticipated method and cost of compliance with the applicable trench safety standards.

Bidder acknowledges that included in the various items of the Bid and in the total Bid price are costs for complying with the Florida Trench Safety Act. These items are a breakout of the respective items involving trenching and will not be paid separately. They are not to be confused with Bid items in the schedule of prices, nor be considered additional Work.



**BID FORM (Page 7 of 9)**

The Bidder further identifies the costs and methods summarized below:

Description	Unit	Quantity Price	Unit Price	Extended	Method
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Total \$ _____					

Attached is a Bid Bond [ ], Cash [ ], Money Order [ ], Unconditional/Irrevocable Letter of Credit [ ], Treasurer's Check [ ], Bank Draft [ ], Cashier's Check [ ], Bid Bond Voucher [ ] or Certified Check [ ] No. \_\_\_\_\_ Bank of \_\_\_\_\_ for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

The Bidder acknowledges this Bid and certifies to the above stated in Part III and IV, by signing and completing the spaces provided below.

Firm's Name: \_\_\_\_\_

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

Printed Name/Title: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Social Security No. or Federal I.D.No.: \_\_\_\_\_

Dun and Bradstreet No.: \_\_\_\_\_ (if applicable)

If a partnership, names and addresses of partners:

\_\_\_\_\_  
 \_\_\_\_\_

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**CERTIFICATE OF AUTHORITY  
(IF CORPORATION)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the corporation to execute bids on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation. I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Secretary: \_\_\_\_\_

Print: \_\_\_\_\_

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**CERTIFICATE OF AUTHORITY**

**(IF PARTNERSHIP)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a partnership organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ to execute Bids on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Partner: \_\_\_\_\_

Print: \_\_\_\_\_

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**CERTIFICATE OF AUTHORITY  
(IF JOINT VENTURE)**

Joint ventures must submit a joint venture agreement indicating that the person signing this Bid is authorized to sign Bid documents on behalf of the joint venture. If there is no joint venture agreement each member of the joint venture must sign the Bid and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

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**CERTIFICATE OF AUTHORITY  
(IF INDIVIDUAL)**

I HEREBY CERTIFY that, I (Name) \_\_\_\_\_, individually and doing business as (d/b/a) \_\_\_\_\_ (as applicable) have executed and am bound by the terms of the Bid to which this attestation is attached.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

Print: \_\_\_\_\_

**NOTARIZATION**

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

COUNTY OF \_\_\_\_\_ ) SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, who is personally known to me or who has produced  
\_\_\_\_\_ as identification and who (did / did not) take an oath.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

\_\_\_\_\_  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

**Section 5 - Attachments**

**BID BOND FORM** (Page 1 of 3)

State of Florida  
County of Miami-Dade  
City of Miami

KNOWN ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ as  
Principal, \_\_\_\_\_ as Surety,  
are held and firmly bound unto the City of Miami, in the penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which sum  
well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors,  
jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has  
submitted the accompanying Bid, dated \_\_\_\_\_, 20\_\_\_\_, for:

Downtown Miami Signage and Wayfinding System - B-30941

NOW THEREFORE:

- (a) If the Principal shall not withdraw said Bid within one hundred twenty (180) days after date of opening the same, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the City, in accordance with the Bid as accepted, and give bond with good and sufficient Surety or Sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or,
- (b) In the event if the withdrawal of said Bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the principal shall pay the City the difference between the amount specified in said Bid and the amount for which the City may procure the required Work and supplies, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

**BID BOND FORM** (Page 2 of 3)

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,

the name and corporate seal of each party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership, Partnership, or Joint Venture, two (2) Witnesses are required. If Corporation, Secretary only will attest and affix seal.)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety Secretary

PRINCIPAL:

\_\_\_\_\_  
(Name of Firm)

Affix  
Seal

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Title)

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

\_\_\_\_\_  
City State Zip  
Surety:

\_\_\_\_\_  
(Corporate Surety)

Affix  
Seal

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Title)

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

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

**BID BOND FORM** (Page 3 of 3)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the within bond; that \_\_\_\_\_ of said corporation; that I know their signature, and the signature hereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing body.

\_\_\_\_\_(Corporate Seal)

STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE    )    SS  
City OF MIAMI                )

Before me, a Notary Public duly commissioned, and qualified, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he/she is the attorney-in-fact, for the \_\_\_\_\_ and that he/she has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Miami, Florida.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

INSTRUCTIONS: Bid Bonds must be accompanied by a Power of Attorney, in compliance with Instructions to Bidders

\_\_\_\_\_  
Notary Public, State of Florida at Large

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

**SUPPLEMENT TO BID FORM:**

**QUESTIONNAIRE**

This Completed Form ***Must*** Be Submitted With The Bid. The City May, At Its Sole Discretion, Require That The Bidder Submit **Additional** Information Not Included In The Submitted Form. Such Information Must Be Submitted Within Seven (7) Calendar Days Of The City's Request. Failure To Submit The Form Or Additional Information Upon Request By The City Shall Result In The Rejection Of The Bid As Non-Responsive. Additional Pages May Be Used Following The Same Format And Numbering.

By submitting its Bid, the Bidder certifies the truth and accuracy of all information contained herein.

**A. Business Information**

1. How many years has Bidder been in business under its current name and ownership?

a. Professional Licenses/Certifications (include name and number)\*      Issuance Date

_____	_____
_____	_____
_____	_____

(\*include active certifications of small or disadvantage business & name of certifying entity)

b. Date Bidder was licensed by State of Florida, Dept. Of Professional Regulation:

\_\_\_\_\_

c. Qualified Business License:     Yes  No    If Yes, Date Issued: \_\_\_\_\_

d. Identify Bidder's primary business? \_\_\_\_\_

(This answer should be specific. For example; paving, drainage, schools, interior renovations, etc.)

e. Name of Bidder's Qualifier, license number, and relationship to company:

\_\_\_\_\_

f. Names of previous Bidder Qualifiers during the past five (5) years including, license numbers, relationship to Bidder and years serving as qualifier.

\_\_\_\_\_

\_\_\_\_\_

2. Name and Licenses of any prior Bidder companies.

Name of Company	License No.	Issuance Date
-----------------	-------------	---------------

\_\_\_\_\_

\_\_\_\_\_

3. Type of Company:

Corporation     "S" Corporation     LLC     Sole Proprietorship     Other: \_\_\_\_\_

(Corporations will be required to provide a copy of their corporate resolution prior to executing a contract)

4. Company Ownership

a. Identify all owners of the company

Name	Title	% of ownership
_____		
_____		
_____		
_____		

b. Is any owner identified above an owner of another company?  Yes  No  
 If yes, identify the name of the owner, other company names, and % ownership for each

\_\_\_\_\_

\_\_\_\_\_

c. Identify all individuals authorized to sign for the Bidder's company, indicating the level of their authority ( check applicable boxes and for other provide specific levels of authority)

Name	Title	Signatory Authority			
		All	Cost	No-Cost	Other
_____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation for Other: \_\_\_\_\_

(Note: "All" refers to any type of document including but not limited to contracts, amendment, change proposal requests (CPR), change orders (CO), notices, claims, disputes, etc. "Cost" refers to CPRs, COs. No-cost refers to RFIs, Notices, and other similar documents).

5. Employee Information

Total No. of Employees: \_\_\_\_\_ Number of Managerial/Admin. Employees: \_\_\_\_\_

Number of Trades Personnel and total number per classification:  
 (Apprentices must be listed separately for each classification)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How many employees are working under H2B visas? \_\_\_\_\_



6. Has any Owner or employee of the Bidder ever been convicted of a federal offense or moral turpitude? If yes, please explain:

\_\_\_\_\_

7. Insurance & Bond Information

a. Insurance Carrier name and address: \_\_\_\_\_

\_\_\_\_\_

b. Insurance Contact Name, telephone, and e-mail: \_\_\_\_\_

\_\_\_\_\_

c. Insurance Experience Modification Rating (EMR): \_\_\_\_\_  
(if no EMR rating please explain why)

d. Number of insurance claims paid out by Bidder in Past 5 years and value of each:

\_\_\_\_\_

e. Bond Carrier name and address: \_\_\_\_\_

\_\_\_\_\_

f. Bond Carrier Contact Name, telephone, and e-mail: \_\_\_\_\_

\_\_\_\_\_

g. Number of Bond Claims paid out by Bidder in Past 5 years and value:

\_\_\_\_\_

8. Have any claims lawsuits been file against Bidder in the past 5 years? If yes, identify all where Bidder has either settled or an adverse judgment has been issued against Bidder. Identify the year basis for the claim or judgment and settlement unless the value of the settlement is covered by a written confidentiality agreement.

\_\_\_\_\_

\_\_\_\_\_

9. To the best of Bidder's knowledge, is Bidder or any officers of Bidder currently under investigation by any law enforcement agency or public entity? If yes, provide details:

\_\_\_\_\_

\_\_\_\_\_

10. Has Bidder been assessed liquidated damages or defaulted on a project in the past five (5) years?  Yes  No (If yes, provide an attachment that provides an explanation of the project and an explanation).

11. Has Bidder been cited for any OSHA violations in the past five (5) years? If yes, please provide an attachment including all details on each citation.

12. Provide an attachment listing all of the equipment, with a value of \$5,000 or greater, owned by the Bidder.

**B. Project Management and Subcontract Details**

1. Project Manager for this Project:

a. Name: \_\_\_\_\_

b. Years with Company: \_\_\_\_\_

c Licenses/Certifications: \_\_\_\_\_

- d. Last 3 projects with the company including role, scope of work, and value of project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Subcontractors:

Name	Trade	% of Work	License No.	Certification*
------	-------	-----------	-------------	----------------

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(\*active certifications of small or disadvantage business and name of certifying entity)

How many Subcontractor employees are working under H2B visas? \_\_\_\_\_

3. Scope of physical construction labor to be self-performed by Bidder and the corresponding percentage of the Work: (This does not include such items as insurance bonds, dumpsters, trailers, and other similar non-construction work items)

\_\_\_\_\_  
\_\_\_\_\_

**C. Current and Prior Experience:**

1. Detail current experience, including Projects currently under construction, recently awarded, or pending award. Provide an attachment to this Questionnaire that lists all such Projects, including the owner's name, title and value of project, scope of work, projected or actual start date, projected completion date, and number of company trades personnel assigned to the Project).
2. Prior Projects of a similar size, scope. Provide an attachment to this Questionnaire that includes completed Projects the Bidder considers of a similar, size, scope and complexity that the City should consider in determining the Bidder's responsiveness and responsibility. (This attachment must include the Project that meets the minimum number

of projects identified by the Bid solicitation. Information provided must include the owner's name, address and contact person, including telephone and e-mail, title of Project, location of Project, scope, initial value and final cost of the project, projected and final timeframes for completion in calendar days, and the number of company trades personnel, by classification, that were assigned to the Project. The delivery method, including, but not limited to; design-build, CM at Risk, Design-Bid-Build, etc., is to be identified for each Project. If there is a difference between the initial and final cost or initial and actual timeframe provide details on why the differences exist. A form reference letter for each reference project (found on the following page), is to be completed by the owner of the Project and submitted as part of the Bid submission.

#### **D. Bidder's References**

Bidders are to include a minimum of the three (3) references from completed Projects listed in C.2 above. The attached form reference letter on page 100 must be used and is to be included with the Bid submission. The City, at its sole discretion may allow the Bidder to submit the references after the specified date for Bid submission.

# City of Miami



Emilio T. González, Ph.D.  
City Manager

To Whom It May Concern

**Subject:** Reference Letter

## The Following Section to be Completed by the Bidder.

Name of Bidder: \_\_\_\_\_

The above referenced Bidder is responding to a Bid that has been issued by the City of Miami. The City requires that the Bidder provide written references with their Bid submission. By providing you with this document, the Bidder is requesting that you provide the following reference information. The City would appreciate you providing the information requested below, as well as any other information you feel is pertinent:

Name of Referenced Project: \_\_\_\_\_

## The Following Section to be Completed by the Project Owner.

Scope of Referenced Work: \_\_\_\_\_

Did the Scope involve the construction, installation, repair and/or replacement of roadway or pedestrian signage?  Yes  No

Value of Project: \$ \_\_\_\_\_ Date Completed: \_\_\_\_\_

Percentage of physical construction labor self-performed by Bidder: \_\_\_\_\_ %

Was project completed on time and within budget:  Yes  No

If no, was the Bidder at fault or contribute to the delay(s) or increased cost?  Yes  No

If yes, please provide details:

Comments:

Name of Project Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Project Owner's Representative:

\_\_\_\_\_

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

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Sincerely,

Annie Perez, CPPO, Director  
Department of Procurement

### **DBE Utilization**

The Department began its DBE race neutral program January 1, 2000. **Contract specific goals are not placed on Federal/State contracts;** however, the Department has an overall 10.65% DBE goal it must achieve. In order to assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this letting.

As you prepare your bid, please monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract with the Department, information will be requested of the contractor's DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBE's.

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information. Forms may be downloaded at: [www.dot.state.fl.us/proceduraldocuments/](http://www.dot.state.fl.us/proceduraldocuments/) .

### **DBE Reporting**

If you are the prime contractor on a project, enter your DBE participation in the Equal Opportunity Compliance system prior to the pre-construction or pre-work conference for all federal and state funded projects. This **will not** become a mandatory part of the contract. It will assist the Department in tracking and reporting planned or estimated DBE utilization. During the contract, the prime contractor is required to report actual payments to DBE and MBE subcontractors through the web-based Equal Opportunity Compliance (EOC) system.

All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact EOOHelp@dot.state.fl.us.

### **Bid Opportunity List**

The Federal DBE Program requires States to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including both **DBE's and non-DBE's**.

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within 3 business days of submission of the bid or proposal for ALL subcontractors or sub-consultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is:

<https://www3.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/Login?ReturnUrl=%2fEqualOpportunityCompliance%2f> .

### **DBE/AA Plans**

Contractors bidding on FDOT contracts are to have an approved DBE Affirmative Action Plan (FDOT Form 275-030-11B) on file with the FDOT Equal Opportunity Office before execution of a contract. DBE/AA Plans must be received with the contractors bid or received by the Equal Opportunity Office prior to the award of the contract.

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a (3) three year period and should be updated at anytime there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

- Print the first page of the document on company stationery ("letterhead") that indicates the company's name, mailing address, phone number, etc.
- Print the company's name in the "\_\_\_\_" space; next to "Date" print the month/day/year the policy is being signed; record the signature of the company's Chief Executive Officer, President or Chairperson in the space next to "by" and print the full first and last name and position title of the official signing the policy.
- Print the DBE Liaison's full name, email address, business mailing address and phone number the bottom of email.

E-mail the completed and signed DBE AA Plan to: **eeoforms@dot.state.fl.us**.

The Department will review the policy, update department records and issue a notification of approval or disapproval; a copy of the submitted plan will not be returned to the contractor.

**BID OPPORTUNITY LIST FOR PROFESSIONAL CONSULTANT SERVICES, AND COMMODITIES & CONTRACTUAL SERVICES**

Prime Contractor/Prime Consultant: \_\_\_\_\_

Address/Phone Number: \_\_\_\_\_

Procurement Number/Advertisement Number: \_\_\_\_\_

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies materials on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT-assisted project. Prime contractors and consultants must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, 7, and 8 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

**AS APPLICABLE, PLEASE SUBMIT THIS FORM WITH YOUR:**

**BID SHEET (Invitation to Bid – ITB)  
LETTERS OF RESPONSE (LOR)  
PRICE PROPOSAL (Request for Proposal – RFP)  
REPLY (Invitation to Negotiate – ITN)**

## 6-12.2 Source of Supply - Steel

For Federal-aid Contracts, only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LAP CERTIFICATION OF CURRENT CAPACITY**

CONFIDENTIAL

For bids to be received on \_\_\_\_\_  
(Letting Date)

Fill in your FDOT Vendor Number
VF _____

(Only applicable to FDOT pre-qualified contractors)

CERTIFICATE

I hereby certify that the amount of any proposal submitted by this bidder for the above letting does not exceed the amount of the Firm's CURRENT CAPACITY (maximum capacity rating less total uncompleted work).

The total uncompleted work as shown on  
the "Status of Contracts on Hand" report (page 2) \$ \_\_\_\_\_

I further certify that the "Status of Contracts on Hand" report (page 2) was prepared as follows:

1. If the letting is before the 25<sup>th</sup> day of the month, the certificate and report reflect the uncompleted work as of the 15<sup>th</sup> day of the month, last preceding the month of the letting.
2. If the letting is after the 25<sup>th</sup> day of the month, the certificate and report reflects the uncompleted work in progress as of the 15<sup>th</sup> day of the month of the letting.
3. All new contracts (and subcontracts) awarded earlier than five days before the letting date are included in the report and charged against our total rating.

I certify that the information above is correct.

Sworn to and subscribed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
NAME OF FIRM

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

\_\_\_\_\_  
Title

### STATUS OF CONTRACTS ON HAND

(Furnish complete information about all your contracts, whether prime or subcontracts;  
whether in progress or awarded, but not yet begun; and regardless of whom contracted with.)

1	2	3	4	5		6
PROJECTS OWNER, LOCATION AND DESCRIPTION	CONTRACT (OR SUBCONTRACT) AMOUNT	AMOUNT SUBLET TO OTHERS	BALANCE OF CONTRACT AMOUNT	UNCOMPLETED AMOUNT TO BE DONE BY YOU		
				AS PRIME CONTRACTOR	AS SUBCONTRACTOR	
NOTE: Columns 2 and 3 to show total contract (or subcontract) amounts. Column 4 to be difference between columns 2 and 3. Amount in columns 5 or 6 to be uncompleted portion of amount in column 4. All amounts to be shown to nearest \$100. The Contractor may consolidate and list as a single item all contracts which, individually, do not exceed 3% of total, and which, in the aggregate, amount to less than 20% of the total.			TOTALS	\$0.00	\$0.00	
			TOTAL UNCOMPLETED WORK ON HAND TO BE DONE BY YOU (TOTAL COLUMNS 5 AND 6)		\$0.00	

## Federal Wage Rates – FL 221

General Decision Number: FL180221 03/16/2018 FL221

Superseded General Decision Number: FL20170221

State: Florida

Construction Type: Highway

County: Miami-Dade County in Florida.

### HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/05/2018
1	02/23/2018
2	03/16/2018

\* ELEC0349-002 03/05/2018

	Rates	Fringes
ELECTRICIAN.....	\$ 33.11	12.31
-----		
SUFL2013-039 08/19/2013		
	Rates	Fringes
CARPENTER.....	\$ 17.84	0.00
CEMENT MASON/CONCRETE FINISHER, Includes Form Work.....	\$ 15.49	0.00
FENCE ERECTOR.....	\$ 12.82	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 15.07	0.00

HIGHWAY/PARKING LOT STRIPING: Painter.....	\$ 12.13	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Spray Nozzleman).....	\$ 11.16	0.00
INSTALLER - GUARDRAIL.....	\$ 13.43	0.00
IRONWORKER, ORNAMENTAL.....	\$ 13.48	0.00
IRONWORKER, REINFORCING.....	\$ 18.43	0.00
IRONWORKER, STRUCTURAL.....	\$ 16.42	0.00
LABORER (Traffic Control Specialist incl. placing of cones/barricades/barrels - Setter, Mover, Sweeper).....	\$ 11.59	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 12.31	0.00
LABORER: Common or General.....	\$ 10.69	0.00
LABORER: Flagger.....	\$ 12.53	0.00
LABORER: Grade Checker.....	\$ 12.41	0.00
LABORER: Landscape & Irrigation.....	\$ 9.02	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 13.91	3.50
LABORER: Pipelayer.....	\$ 15.02	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 16.24	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 12.88	0.00
OPERATOR: Boom.....	\$ 18.95	0.00
OPERATOR: Boring Machine.....	\$ 15.29	0.00
OPERATOR: Broom/Sweeper.....	\$ 13.01	0.00
OPERATOR: Bulldozer.....	\$ 16.77	0.00
OPERATOR: Concrete Finishing Machine.....	\$ 15.44	0.00
OPERATOR: Concrete Saw.....	\$ 14.43	0.00
OPERATOR: Crane.....	\$ 22.46	0.00

OPERATOR: Curb Machine.....	\$ 20.74	0.00
OPERATOR: Distributor.....	\$ 13.29	0.00
OPERATOR: Drill.....	\$ 14.78	0.00
OPERATOR: Forklift.....	\$ 16.32	0.00
OPERATOR: Gradall.....	\$ 14.71	0.00
OPERATOR: Grader/Blade.....	\$ 20.22	3.85
OPERATOR: Loader.....	\$ 15.53	0.00
OPERATOR: Mechanic.....	\$ 18.03	0.00
OPERATOR: Milling Machine.....	\$ 14.67	0.00
OPERATOR: Oiler.....	\$ 16.32	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 13.61	0.00
OPERATOR: Piledriver.....	\$ 17.23	0.00
OPERATOR: Post Driver (Guardrail/Fences).....	\$ 14.45	0.00
OPERATOR: Roller.....	\$ 13.67	0.00
OPERATOR: Scraper.....	\$ 12.01	0.00
OPERATOR: Screed.....	\$ 14.15	0.00
OPERATOR: Tractor.....	\$ 12.19	0.00
OPERATOR: Trencher.....	\$ 14.74	0.00
PAINTER: Spray.....	\$ 16.52	0.00
SIGN ERECTOR.....	\$ 12.96	0.00
TRAFFIC SIGNALIZATION: Traffic Signal Installation.....	\$ 19.07	0.00
TRUCK DRIVER: Distributor Truck.....	\$ 14.96	2.17
TRUCK DRIVER: Dump Truck.....	\$ 12.19	0.00
TRUCK DRIVER: Flatbed Truck.....	\$ 14.28	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 15.07	0.00
TRUCK DRIVER: Slurry Truck.....	\$ 11.96	0.00
TRUCK DRIVER: Vactor Truck.....	\$ 14.21	0.00

TRUCK DRIVER: Water Truck.....\$ 13.17 1.60

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====  
Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1,

2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



## **City of Miami Code of Ordinances Ch 18. Sec. 18-542. Financial Integrity Principles**

The following financial integrity principles are hereby adopted:

(1) *Structurally balanced budget.* The city shall maintain a structurally-balanced budget. Recurring revenues will fund recurring expenditures.

(2) *Estimating conference process.* The city shall adopt budgets and develop its long and short-term financial plan utilizing a professional estimating conference process. Conference principals shall include, but not be limited to: one principal from the budget office; one principal from the finance department and two non-staff principals with public finance expertise.

(3) *Interfund borrowing.* The city shall not borrow or use internal fund transfers to obtain cash from one fund type or reserve to fund activities of another fund type or reserve unless such use is deemed lawful, and unless the estimating conference has determined that (a) the funds to be loaned will not be needed during the lending period, and (b) the funds for repayment will be available within a two-year period. Any actions taken to borrow funds under these conditions must be separately presented to and approved by the city commission and the term of such borrowing shall not extend beyond the last day of the subsequent fiscal year. Recognizing that some programs are funded by grants or other entities on a reimbursement basis, the city shall apply for such reimbursements on a timely basis to minimize the period that city funds are used as float. In the event loans/float for these reimbursements extend beyond the end of a fiscal year, such reimbursements shall be reflected as receivables in the comprehensive annual financial statements report (CAFR) to the extent allowed under accounting principles generally accepted in the United States of America (GAAP). The department of finance shall make a quarterly determination of the amount of expenses incurred which may not be reimbursable under these programs. A quarterly report of expenses incurred but not reimbursable shall be presented to the city commission, together with the actions needed to avoid project deficits.

(4) For purposes of this section, city-wide surplus for any fiscal year is defined as the increase in unreserved general fund balance as reflected in the city's comprehensive annual financial report (CAFR). City-wide deficit for any fiscal year is defined as the decrease in unreserved general fund balance as reflected in the city's comprehensive annual financial report (CAFR). Budget surplus of any office, department or elected official is defined as the excess of budgeted expenses over actual expenses in any fiscal year. Notwithstanding anything to the contrary in this section, the total amount of budget surplus to be added to designated reserves and special revenue funds pursuant to this section (together, the "rollover amounts") is limited to city-wide surplus for any fiscal year. In the event the rollover amounts would result in a city-wide deficit, then each budget surplus within the rollover amounts shall be reduced proportionately so the city's comprehensive annual financial report (CAFR) will reflect no change in undesignated, unreserved general fund balance. In the event that a city-wide deficit would result before effecting the rollover amounts in any fiscal year, then no rollover amounts shall be available.

a. Budget surpluses in an elected official's budget in any fiscal year shall be reflected as designated reserves at the end of the fiscal year in which such surplus arose and be appropriated for discretionary use of such elected official for the following fiscal year.

b. Budget surpluses of the parks and recreation department shall be allocated, as of the end of the fiscal year in which such surplus arose, to a parks special revenue fund. Allowed expenditures from the parks special revenue fund shall be limited to the purchase of parks recreational and maintenance equipment and the direct operations of recreational programs in and for the city's parks, subject to appropriation by the city commission.

c. Budgeted surpluses of the department of conferences, conventions and public facilities shall be allocated, as of the end of the fiscal year in which such surplus arose, to a public facilities special revenue fund. Allowed expenditures of the public facilities special revenue fund shall be limited to capital improvements for the city's public facilities, subject to appropriation by the city commission.

d. Budgeted surpluses of the department of information technology shall be allocated, as of the end of the fiscal year in which such surplus arose, to an IT strategic plan special revenue fund. Allowed expenditures of the IT strategic plan special revenue fund shall be limited to expenditures, excluding those related to permanent city staff, necessary for the implementation of the city's information technology strategic plan, subject to appropriation by the city commission.

(5) *Reserve policies.* The following three reserve policies categories are established for the general operating fund of the city: Payment for compensated absences and other employee benefit liabilities and self-insurance plan deficits may be drawn from this reserve during the fiscal year and shall be replenished each year until fifty percent (50%) if such the liabilities are funded. Other designated reserves may be drawn upon without the need for replenishment.

a. Current fiscal year contingency. A "contingency" reserve level of \$5,000,000.00 shall be budgeted annually. Such contingency reserve shall be available for use, with city commission approval, during the fiscal year, to fund unanticipated budget issues which arise or potential expenditure overruns which cannot be offset through other sources or actions. The unused portion of the budgeted contingency reserve in any fiscal year shall be reflected as designated reserves until such time as the city has funded 50 percent of the liabilities of the long-term liabilities (excluding bonds, loans, and capital lease payables) as reflected in the city's comprehensive annual financial report (CAFR). Amounts not needed to satisfy the 50 percent requirement shall be considered general fund undesignated reserve and be treated in accordance with subsection (5)b.

b. General fund undesignated reserve. The city shall retain undesignated reserves equal to a threshold ten percent of the prior three years average of general revenues. Such reserves may only be used for offsetting an unexpected mid-year revenue shortfall or for funding an emergency such as a natural or man-made disaster, which threatens the health, safety and welfare of the city's residents, businesses or visitors. Any time these reserve funds fall below the ten percent threshold, the city commission shall adopt a plan to achieve the threshold within two fiscal years. Amounts in excess of the ten percent threshold may be used for capital improvements, unanticipated expenditures necessary to assure compliance with legal commitments, and for expenditures that will result in the reduction of recurring costs or the increase in recurring revenues of the city.

c. Designated reserves. The city shall retain reserves equal to ten percent of the prior three years average of general revenues. Such reserves shall be used for funding long-term liabilities and commitments of the city such as:

1. Compensated absences and other employee benefit liabilities, including liabilities related to post-retirement benefits;
2. Self-insurance plan deficits (including workers' compensation, liability claims and health insurance);
3. Strategic initiatives (until completed);
4. Blue Ribbon Commission Initiatives (until completed);
5. Anticipated adjustments in pension plan payments resulting from market losses in plan assets and other unanticipated payments necessary to maintain compliance with contractual obligations.

(6) *Proprietary funds.* The city shall establish proprietary funds only if the costs to provide the service are fully funded from the charges for the service.

(7) *Multi-year financial plan.* The city commission shall annually adopt a five-year financial plan by September 30 of each year, reflecting as the base year, the current year's budget. For fiscal year 2004 the multi-year financial plan will be adopted no later than 30 days after the completion of labor negotiations. Such plan will include cost estimates of all current city operations and pension obligations, anticipated increases in operations, debt service payments, reserves to maintain the city's officially adopted levels and estimated recurring and non-recurring revenues. This plan will be prepared by fund and reflect forecasted surpluses or deficits and potential budget balancing initiatives, where appropriate.

(8) *Multi-year capital improvement plan.* The city commission shall annually adopt a capital improvements plan ("CIP") by November 30th of each year. The CIP shall address cost estimates for all necessary infrastructure improvements needed to support city services, including information technology, with an adequate repair and replacement ("R&R") component. Funded, partially funded and unfunded projects shall be clearly delineated. The CIP shall be detailed for the current fiscal year and for five additional years and, if practicable, additional required improvements aggregated for two additional five year periods. To the extent feasible, department heads shall be required to submit independent needs assessments for their departments for use in preparing the CIP. The CIP will be detailed by fund, include recommended project prioritization rankings, identified revenue sources, planned financing options and unfunded projects. The CIP shall include estimates of the operational impacts produced for the operation of the capital improvements upon their completion. The CIP shall include a component reflecting all on-going approved capital projects of the city, the date funded, amount budgeted, amount spent since the start date, remaining budget, fiscal impact of known changes to financial assumptions underlying the project, estimated expenditures by fiscal year for the project and estimated completion date. Approved projects, with

circumstances that arise which change the funding requirements of the project, shall be addressed in the CIP annually.

(9) *Debt management.* The city shall manage its debt in a manner consistent with the following principles:

a. Capital projects financed through the issuance of bonded debt shall be financed for a period not to exceed the estimated useful life of the project.

b. The net direct general obligation debt shall not exceed five percent and the net direct and overlapping general obligation debt shall not exceed ten percent of the taxable assessed valuation of property in the city.

c. The weighted average general obligation bond maturity shall be maintained at 15 years or less.

d. Special obligation debt service shall not exceed 20 percent of non-ad valorem general fund revenue.

e. Revenue based debt shall only be issued if the revenue so pledged will fully fund the debt service after operational costs plus a margin based on the volatility of the revenues pledged.

(10) *Financial oversight and reporting.* The city shall provide for the on-going generation and utilization of financial reports on all funds comparing budgeted revenue and expenditure information to actual on a monthly and year-to-date basis. The finance department shall be responsible for issuing the monthly reports to departments, the mayor and city commission, and provide any information regarding any potentially adverse trends or conditions. These reports should be issued within 30 days after the close of each month. The annual external audit reports (comprehensive annual financial report (CAFR), single audit, and management letter) of the city shall be prepared and presented to the mayor and city commission by March 31 of each year. The city commission shall convene a workshop meeting with the external auditors to review the findings and recommendations of the audit. Financial reports, offering statements and other financial related documents issued to the public, shall provide full and complete disclosure of all material financial matters.

(11) *Basic financial policies.* The city shall endeavor to maintain formal policies, which reflect "best practices" in the areas of:

a. *Debt:* Such policy shall address affordability, capacity, debt issuance and management.

b. *Cash management and investments:* Such policy shall require 24-month gross and net cash-flow projections by fund and address adequacy, risk, liquidity and asset allocation issues.

c. *Budget development and adjustments:* Such policy shall establish proper budgetary preparation procedures and guidelines, calendar of events, planning models by fund, budget adjustment procedures, establishment of rates and fees, indirect costs/interest income and the estimating conference process. The proposed budget should be scheduled to allow sufficient review by the mayor and city commission while allowing for sufficient citizen input. The city budget document reflecting all final actions as adopted by the city commission on or before September 30 of each year, shall be printed and made available within 30 days of such adoption.

d. *Revenue collection:* Such policy shall provide for maximum collection and enforcement of existing revenues, monitoring procedures, and the adequacy level of subsidy for user fees.

e. *Purchasing policy:* Such policy shall establish departmental policies and procedures and provide appropriate checks and balances to ensure the city departments adhere to the city's purchasing policies.

(12) *Evaluation committees.* Such committees shall be created, to the extent feasible, and contain a majority of citizen and/or business appointees from outside city employment to review city solicitations ("requests for proposals", etc.), and all collective bargaining contract issues. The recommendations of the evaluation committee shall be provided to the mayor and city commission on all such contracts prior to presentation for official action.

(13) *Full cost of service.* The city shall define its core services and develop financial systems that will determine on an annual basis the full cost of delivering those services. This information shall be presented as part of the annual budget and financial plan.

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(Ord. No. 11890, § 4, 2-10-00; Ord. No. 12113, § 1, 9-25-01; Ord. No. 12276, § 2, 9-11-02; Ord. No. 12353, § 2, 4-10-03; Ord. No. 12427, § 2, 10-23-03; Ord. No. 12518, § 2, 3-25-04; Ord. No. 12727, § 2, 9-22-05)

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THIS Contract # **17-18-022** made this \_\_\_\_ day of \_\_\_\_\_ in the year 2018 in the amount of \$\_\_\_\_\_ by and between THE CITY OF MIAMI, FLORIDA, hereinafter called the "CITY," and \_\_\_\_\_, hereinafter called the "Contractor".

**Section 6 - Contract Execution Form**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST

Click here to enter text., a Florida corporation

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name, Title*

\_\_\_\_\_  
*Print Name, Title of Authorized Officer or Official*

ATTEST:

(Corporate Seal)

CONTRACTOR Secretary  
(Affirm CONTRACTOR Seal, if available)

ATTEST:

**City of Miami**, a municipal corporation of the State of Florida

\_\_\_\_\_  
**Todd B. Hannon, City Clerk**

\_\_\_\_\_  
**Emilio T. González, Ph.D., City Manager**

APPROVED AS TO INSURANCE  
REQUIREMENTS:

APPROVED AS TO LEGAL FORM AND  
CORRECTNESS:

\_\_\_\_\_  
**Ann-Marie Sharpe, Director  
Risk Management Department**

\_\_\_\_\_  
**Victoria Méndez, City Attorney**

**CORPORATE RESOLUTION**

WHEREAS, \_\_\_\_\_ desires to enter into a contract with the City of Miami for the purpose of performing the work described in the contract to which this resolution is attached; and

WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the \_\_\_\_\_,  
(type title of officer)

\_\_\_\_\_, is hereby authorized  
(type name of officer)

and instructed to enter into a contract, in the name and on behalf of this corporation, with the City of Miami upon the terms contained in the proposed contract to which this resolution is attached and to execute the corresponding performance bond.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)

**FORM OF PERFORMANCE BOND** (Page 1 of 2)

BY THIS BOND, We \_\_\_\_\_, as Principal, hereinafter called Contractor, and \_\_\_\_\_, as Surety, are bound to the City of Miami, Florida, as Obligee, hereinafter called City, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, **ITB No: 17-18-022**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with City which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Performs the Contract between Contractor and City for construction of Downtown Miami Signage and Wayfinding System - Project No.: B-30941, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains as a result of default by Contractor under the Contract; and
3. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.
4. Whenever Contractor shall be, and declared by City to be, in default under the Contract, City having performed City obligations hereunder, the Surety may promptly remedy the default, or shall promptly:
  - 4.1. Complete the Project in accordance with the terms and conditions of the Contract Documents; or

**FORM OF PERFORMANCE BOND** (Page 2 of 2)

4.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if City elects, upon determination by City and Surety jointly of the lowest responsible Bidder, arrange for a Contract between such Bidder and City, and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Contract and any amendments thereto, less the amount properly paid by City to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than City named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESSES:

\_\_\_\_\_  
(Name of Corporation)

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name and Title)

IN THE PRESENCE OF:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INSURANCE COMPANY:  
By: \_\_\_\_\_  
Agent and Attorney-in-Fact  
Address: \_\_\_\_\_  
(Street)  
\_\_\_\_\_  
(City/State/Zip Code)  
Telephone No.: \_\_\_\_\_



**FORM OF PAYMENT BOND (Page 1 of 2)**

BY THIS BOND, We \_\_\_\_\_, as Principal, hereinafter called Contractor, and \_\_\_\_\_, as Surety, are bound to the City of Miami, Florida, as Obligee, hereinafter called City, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, **ITB No: 17-18-022**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with City which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains because of default by Contractor under the Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the Work, furnish to Contractor a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. No action for the labor, materials, or supplies may be instituted against Contractor and the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2), or Section 95-11, Florida Statutes.

**FORM OF PAYMENT BOND** (Page 2 of 2)

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Contractor

ATTEST:

\_\_\_\_\_  
(Name of Corporation)

\_\_\_\_\_  
(Secretary)

By:

\_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Print Name and Title)

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

IN THE PRESENCE OF:

INSURANCE COMPANY:

By:

\_\_\_\_\_  
Agent and Attorney-in-Fact

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_



**PERFORMANCE AND PAYMENT GUARANTY FORM**

**UNCONDITIONAL/IRREVOCABLE LETTER OF CREDIT:** (Page 1 of 2)

Date of Issue \_\_\_\_\_

Issuing Bank's No. \_\_\_\_\_

Beneficiary:  
City of Miami  
444 SW 2<sup>nd</sup> Avenue  
Miami, Florida 33130

Applicant:  
Amount: \_\_\_\_\_  
in United States Funds

Expiry:  
(Date)

Bid/Contract Number \_\_\_\_\_

We hereby authorize you to draw on \_\_\_\_\_  
(Bank, Issuer name)  
at \_\_\_\_\_ by order  
(branch address)

of and for the account of \_\_\_\_\_  
(contractor, applicant, customer)

up to an aggregate amount, in United States Funds, of \_\_\_\_\_ available by your drafts at sight, accompanied by:

1. A signed statement from the City Manager or his authorized designee, that the drawing is due to default in performance of certain obligations on the part of \_\_\_\_\_ (contractor, applicant, customer) agreed upon by and between the City of Miami, Florida and \_\_\_\_\_ (contractor, applicant, customer), pursuant to Bid/Contract No. \_\_\_\_\_ for \_\_\_\_\_ (name of project) and Section 255.05, Florida Statutes.

Drafts must be drawn and negotiated no later than \_\_\_\_\_.  
(expiration date)

**PERFORMANCE AND PAYMENT GUARANTY FORM**  
**UNCONDITIONAL/IRREVOCABLE LETTER OF CREDIT:** (Page 2 of 2)

Drafts must bear the clause: "Drawn under Letter of Credit No. \_\_\_\_\_ (Number), of \_\_\_\_\_ (Bank name) dated \_\_\_\_\_.

This Letter of Credit shall be renewed for successive periods of one (1) year each unless we provide the City of Miami with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) days prior to the expiration date of the original term hereof or any renewed one (1) year term. Notification to the City that this Letter of Credit will expire prior to performance of the Contractor's obligations will be deemed a default.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, or amplified by reference to any documents, instrument, or agreement referred to herein or to which this Letter of Credit is referred or this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored upon presentation to the drawee.

Obligations under this Letter of Credit shall be released one (1) year after the Final Completion of the Project by the \_\_\_\_\_.  
(contractor, applicant, customer)

This Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce (1993 revision), Publication No. 500 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

Authorized Signature: \_\_\_\_\_

**FORM A**

**INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY**

If the Bidder is submitting as a joint venture, please be advised that this form (2 pages) **MUST** be completed and the REQUESTED written joint venture agreement **MUST** be attached and submitted with this form.

1. Name of joint venture: \_\_\_\_\_

2. Address of joint venture: \_\_\_\_\_

3. Phone number of joint venture: \_\_\_\_\_

4. Identify the firms that comprise the joint venture: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5. Describe the role of the MBE firm (if applicable) in the joint venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Provide a copy of the joint venture's written contractual agreement.

7. Control of and participation in this Agreement. Identify by name, race, gender, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

(a) Financial decisions: \_\_\_\_\_

(b) Management decisions, such as: \_\_\_\_\_

(1) Estimating: \_\_\_\_\_

(2) Marketing and sales: \_\_\_\_\_

\_\_\_\_\_

(3) Hiring and firing of management personnel: \_\_\_\_\_

\_\_\_\_\_

(4) Purchasing of major items or supplies: \_\_\_\_\_

\_\_\_\_\_

(c) Supervision of field operations: \_\_\_\_\_

\_\_\_\_\_

NOTE: If, after filing this form and before the completion of the joint venture's work on the subject Contract, there is any significant change in the information submitted, the joint venture must inform the City in writing.

**AFFIDAVIT**

"The undersigned swear or affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venturer relevant to the joint venture, by authorized representatives of the City. Any material misrepresentation will be grounds for terminating any Contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Bidder: _____	Name of Bidder: _____
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**Section 7**

**LAP DIVISION 1 SPECIFICATIONS (OFF-SYSTEM)**  
(REV 9-23-16) (1-17)

Construction Checklist Specifications  
from  
Department of Transportation  
Standard Specifications for Road and Bridge Construction

*The following excerpts from the Standard Specifications and Special Provisions are provided for use in LAP Specifications as needed in accordance with the Local Agency Program Checklist for Construction Contracts (Phase 58) – Federal and State Requirements (525-070-44)*



## **SECTION 1 – DEFINITIONS AND TERMS.**

**Department Name** \_\_\_\_\_

**Engineer** \_\_\_\_\_

### **Contractor’s Engineer of Record.**

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor’s Engineer of Record may also serve as the Specialty Engineer.

The Contractor’s Engineer of Record must be an employee of a pre-qualified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor’s Engineer of Record may be a pre-qualified Specialty Engineer. For items of the permanent work declared by the State Construction Office to be “major” or “structural”, the work performed by a pre-qualified Specialty Engineer must be checked by another pre-qualified Specialty Engineer. An individual Engineer may become pre-qualified in the work groups listed in the Rules of the Department of Transportation, Chapter 14-75, if the requirements for the Professional Engineer are met for the individual work groups. Pre-qualified Specialty Engineers are listed on the State Construction Website. Pre-qualified Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the plans.

### **Specialty Engineer.**

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the project work or for special items of the permanent works not fully detailed in the plans and required to be furnished by the Contractor such as but not limited to pot bearing designs, non-standard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may also provide designs and details for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”. The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant.

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if he has the following qualifications:

- (1) Registration as a Professional Engineer in the State of Florida.
- (2) The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

## **SECTION 4 – Scope of the Work.**

### **4-3 Alteration of Plans or of Character of Work.**

**4-3.1 General:** The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

The term “significant change” applies only when:

1. The Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or
2. A major item of work, as defined in 1-3, is increased in excess of 125% or decreased below 75% of the original Contract quantity. The Department will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity in accordance with 4-3.2 below. In the case of a decrease below 75% the Department will only apply a price adjustment for the additional costs that are a direct result of the reduction in quantity.

In (1) above, the determination by the Engineer shall be conclusive. If the determination is challenged by the Contractor in any proceeding, the Contractor must establish by clear and convincing proof that the determination by the Engineer was without any reasonable basis.

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely submitted a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal.

The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data submitted is accurate and complete to the Contractor’s best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department’s responsibility. Such certification must be made by an officer or

director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer’s sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

1. Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

<b>Table 4-3.2.1</b>	
<b>Item</b>	<b>Rate</b>
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual

<b>Table 4-3.2.1</b>	
Item	Rate
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

At the Pre-construction conference, certify to the Engineer the following:

- a. A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- b. Actual Rate for items listed in Table 4-3.2.1,
- c. Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- d. Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

2. Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

3. Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

a. Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.

b. Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.

c. Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.

d. Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

4. Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (a) or (b) below:

a. Solely a mark-up of 17.5% on the payments in (1) through (3), above.

1. Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

2. The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

b. Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the combined total number of calendar days granted as time extensions due to either extra work, excluding overruns to existing contract items, that extend the duration of the project or delay of a controlling work item caused solely by the Department, or the combined total number of calendar days for which a claim of entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined to be in favor of the Contractor. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

**4-3.2.2 Subcontracted Work:** Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:

$$D_s = \frac{A_s \times C}{B}$$

Where  $A_s$  = Original Contract Amount minus Original Subcontract amounts(s)\*  
 $B$  = Original Contract Time  
 $C$  = 8%  
 $D_s$  = Average Overhead Per-Day

\* deduct Original Subcontract Amount(s) of subcontractor(s) performing the work

The subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually submitted and paid for separate bond premiums for such additional or unforeseen work in such amount and that the subcontractor was required by the Contractor to acquire a bond.

The Contractor shall require the subcontractor to submit a certification, in accordance with 4-3.2.1 (1), as part of the cost proposal and submit such to the Engineer. Such certification

must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

**4-3.3 No Waiver of Contract:** Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

**4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:** A Supplemental Agreement or Unilateral Payment will be used to clarify the Plans and Specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in the Plans which could not reasonably have been contemplated or foreseen in the original Plans and Specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

**4-3.5 Extra Work:** Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in 4-3.2 for additional work.

**4-3.6 Connections to Existing Pavement, Drives and Walks:** Generally adhere to the limits of construction at the beginning and end of the project as detailed in the Plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated in the Plans, the Engineer will submit direction regarding the proper connections in accordance with the Design Standards.

**4-3.7 Differing Site Conditions:** During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has submitted the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

**4-3.8 Changes Affecting Utilities:** The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, Design Plans (including Traffic Control Plans) or other Contract Documents and which effect a change in utility work different from that shown in the Utility Plans, joint project agreements or utility relocation schedules.

**4-3.9 Cost Savings Initiative Proposal:**

**4-3.9.1 Intent and Objective:**

1. This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Proposal) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. A mandatory Cost Savings Initiative Workshop will be held prior to Contract Time beginning for the Contractor and Department to discuss potential Proposals. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

2. The Department will consider Proposals that would result in net savings to the Department by providing a decrease in the cost of the Contract. Proposals must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. However, nothing herein prohibits the Contractor from submitting Proposals



when the required functions and characteristics can be combined, reduced or eliminated because they are nonessential or excessive. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a Proposal.

3. The Department reserves the right to reject at its discretion any Proposal submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending the Department's execution of a formal supplemental agreement implementing an approved Proposal, the Contractor shall remain obligated to perform the work in accordance with the terms of the existing Contract. The Department may grant time extensions to allow for the time required to develop and review a Proposal.

4. For potential Proposals not discussed at the Cost Savings Initiative Workshop, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal prior to development of the Proposal.

**4-3.9.2 Subcontractors:** The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of Proposals from subcontractors. However, it is not mandatory to submit Proposals to the Department or to accept or transmit subcontractor proposed Proposals to the Department.

**4-3.9.3 Data Requirements:** As a minimum, submit the following information with each Proposal:

1. a description of the difference between the existing Contract requirement, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.

2. separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

3. an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the Proposal if the Department adopts it. Submit preliminary plan drawings sufficient to describe the proposed changes.

4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the Proposal with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with drawings and computations signed and sealed by the Contractor's Engineer of Record. Written documentation or drawings will be submitted clearly delineating the responsibility of the Contractor's Engineer of Record.

5. the date by which the Department must approve the Proposal to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

6. a revised project schedule that would be followed upon approval of the Proposal. This schedule would include submittal dates and review time for the Department and Peer reviews.

**4-3.9.4 Processing Procedures:** Submit Proposals to the Engineer or his duly authorized representative. The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The Department is not liable for any Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a Proposal, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the Proposal, the Department will determine the Contractor's fair share upon the basis of the Proposal as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the Proposal from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, submit acceptable Contract-quality plan sheets revised to show all details consistent with the Proposal design.

**4-3.9.5 Computations for Change in Contract Cost of Performance:** If the Proposal is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the Proposal.

The Department will not include its costs to process and implement a Proposal in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a Proposal as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

**4-3.9.6 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges:** A Proposal that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge Plans relating to the Proposal shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purposes of this article as the Independent Review Engineer who is not the originator of the Proposal design, and is pre-qualified by the Department in accordance with Rule 14-75, Florida Administrative Code. The independent peer review is intended to be a comprehensive, thorough verification of the original work, giving assurance that the design is in compliance with all Department requirements. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The Independent Review Engineer

shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

The Contractor shall designate a primary engineer responsible for the Proposal design and as such will be designated as the Contractors Engineer of Record for the Proposal design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for design of the entire structure.

New designs and independent peer reviews shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

**4-3.9.7 Sharing Arrangements:** If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and the Department. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal. The reasonable documented engineering costs will be paid by the Department. Engineering costs will be based on the consultant's certified invoice and may include the costs of the Independent Review Engineer in 4-3.9.6. The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor.

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a Proposal:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** The Contractor's Proposal submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's Proposal development, have or may have that are in whole or in part implicated in the Proposal. Such required intellectual property rights notice includes, but is not limited to, disclosure of any issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the Proposal that are already on the Department's Approved Product List (APL) or Design Standard Indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

**4-3.9.8.2 Department's Future Rights to a Proposal:** Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a Proposal, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative

works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such Proposal on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4-3.9.8.1, unless the Department has by express written exception in the Proposal acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

## **SECTION 5 – Control of the Work (FINAL ACCEPTANCE AND CLAIMS).**

### **5-11 Final Acceptance.**

When, upon completion of the final construction inspection of the entire project, the Engineer determines that the Contractor has satisfactorily completed the work, the Engineer will give the Contractor written notice of final acceptance.

### **5-12 Claims by Contractor.**

**5-12.1 General:** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

#### **5-12.2 Notice of Claim:**

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit written notification to the Engineer of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for

time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such written notification is not submitted and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

**5-12.2.2 Claims For Delay:** Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in 5-12.3 and duly certified pursuant to 5-12.9.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(1) and (3), and then only to the extent the Contractor could not reasonably mitigate such idleness.

**5-12.3 Content of Written Claim:** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

1. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
2. The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
3. Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
4. Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
5. A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
  - a. documented additional job site labor expenses;
  - b. documented additional cost of materials and supplies;
  - c. a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
  - d. any other additional direct costs or damages and the documents in support thereof;
  - e. any additional indirect costs or damages and all documentation in support thereof.
6. A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

**5-12.4 Action on Claim:** The Engineer will respond in writing on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim in writing within 90 or 120 days, respectively, after receipt of a complete claim submitted by the Contractor in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per 5-11 of all Contract work by the Department or denial hereunder, whichever occurs last.

**5-12.5 Pre-Settlement and Pre-Judgment Interest:** Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the Nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

**5-12.6 Compensation for Extra Work or Delay:**

**5-12.6.1 Compensation for Extra Work:** Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

**5-12.6.2 Compensation for Delay:** Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, supplemental agreements, work orders, disruptions, differing site conditions, utility conflicts, design changes or defects, time

extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract Time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

**5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay:** For any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

**5-12.7 Mandatory Claim Records:** After submitting to the Engineer a notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, submit the Contractor's daily records to the Engineer and be likewise entitled to receive the Department's daily records. The daily records to be submitted hereunder shall be done at no cost to the recipient.

**5-12.8 Claims for Acceleration:** The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

**5-12.9 Certificate of Claim:** When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

**5-12.10 Non-Recoverable Items:** The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

1. Loss of profit, incentives or bonuses;
2. Any claim for other than extra work or delay;



3. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;

4. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing “to accelerate at the Department’s expense”; nor

5. Attorney fees, claims preparation expenses and costs of litigation.

**5-12.11 Exclusive Remedies:** Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department’s liability will be limited to those items which are specifically identified as payable in 5-12.

**5-12.12 Settlement Discussions:** The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

**5-12.13 Personal Liability of Public Officials:** In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

**5-12.14 Auditing of Claims:** All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department’s sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department’s auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to submit to the Department any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor’s claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department’s auditors, or upon the

Department's written request, submit at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

## **SECTION 6 – Control of Materials.**

### **6-1 Acceptance Criteria.**

**6-1.1 General:** Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. Use only materials in the work that meet the requirements of these Specifications. The Engineer may inspect and test any material, at points of production, distribution and use.

**6-1.2 Sampling and Testing:** Use the Department's current sample identification and tracking system to provide related information and attach the information to each sample. Restore immediately any site from which material has been removed for sampling

purposes to the pre-sampled condition with materials and construction methods used in the initial construction, at no additional cost to the Department.

Ensure when a material is delivered to the location as described in the Contract Documents, there is enough material delivered to take samples, at no expense to the Department.

**6-1.2.1 Pretest by Manufacturers:** Submit certified manufacturer's test results to the Engineer for qualification and use on Department projects. Testing will be as specified in the Contract Documents. The Department may require that manufacturers submit samples of materials for independent verification purposes.

**6-1.2.2 Point of Production Test:** Test the material during production as specified in the Contract Documents.

**6-1.2.3 Point of Distribution Test:** Test the material at Distribution facilities as specified in the Contract Documents.

**6-1.2.4 Point of Use Test:** Test the material immediately following placement as specified in the Specifications. After delivery to the project, the Department may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by manufacturer certification. The Department may reject all materials that, when retested, do not meet the requirements of these Specifications.

### **6-1.3 Certification:**

**6-1.3.1 Manufacturer Material Certification:** Submit material certifications for all materials to the Engineer for approval when required by the Specifications. Materials will not be considered for payment when not accompanied by a material certification. Sample material certification forms are available on the Department's website at the following URL: <http://www.dot.state.fl.us/statematerialsoffice/administration/resources/library/publications/certifications/sampleforms.shtm>. Ensure that the material certification follows the format of the sample form, is submitted on the manufacturer's letterhead and is signed by a legally responsible person employed by the manufacturer.

**6-1.3.1.1 Approved Product List:** This list provides assurance to Contractors, consultants, designers, and Department personnel that specific products and materials are approved for use on Department facilities. The Department will limit the Contractor's use of products and materials that require use of APL items to those listed on the APL effective at the time of placement. Where the terms Qualified Products List (QPL) appear in the Contract Documents, they will be synonymous with Approved Product List (APL).

Manufacturers seeking to have a product evaluated for the APL must submit a Request for Product Consideration application, available on the Department's website at the following URL: <http://www.dot.state.fl.us/programmanagement/ProductEvaluation/Default.shtm>.

Applications must include supporting documentation as required by the Specifications, Design Standards, and APL approval process. Required test reports must be conducted by an independent laboratory or other independent testing facility and required drawings and calculations must be signed and sealed by a Professional Engineer licensed in the State of Florida unless defined otherwise in the Specifications, Design Standards, and APL approval process requirements. Applications must be signed by a legally responsible person employed by the manufacturer of the product. Manufacturer name and material designation

(product name, product model/part number/style number, etc.) submitted on the application must be as identified on the product, product packaging or product labels as required by the Specifications.

Products that have successfully completed the Department's evaluation process are eligible for inclusion on the APL. Unless defined otherwise in the Specifications, Design Standards, or APL approval process requirements, products listed on the APL must have an associated photograph, drawing, or product label submitted by the product manufacturer before listing on the APL. Manufacturers are required to submit requests to the Department for approval of any modifications or alterations made to a product listed on the APL. This includes, but is not limited to, design, materials, fabrication methods or operational modifications. Modification or alteration requests must be submitted along with supporting documentation that the product continues to meet the Specification or Design Standards requirements. A product sample and additional product testing may be required for the modification evaluation. Any marked variations from original test values, failure to notify the Department of any modifications or alterations, or any evidence of inadequate performance of a product as a result of product modification or alteration, may result in removal of the product from the APL.

Manufacturers must submit supporting documentation to the Department for a periodic review and re-approval of their APL products on or before the product's original approval anniversary. APL products that are not re-approved may be removed from the APL. Documentation requirements for the product review and re-approval, including schedule and criteria, are available on the Department's website at the following URL:  
<http://www.dot.state.fl.us/programmanagement/ProductEvaluation/Default.shtm> .

**6-1.3.2 Contractor Installation Certification:** Submit installation certifications as required by the Contract Documents.

## **6-2 Applicable Documented Authorities Other Than Specifications.**

**6-2.1 General:** Details on individual materials are identified in various material specific Sections of the Specifications that may refer to other documented authorities for requirements. When specified, meet the requirements as defined in such references.

**6-2.2 Test Methods:** Methods of sampling and testing materials are in accordance with the Florida Methods (FM). If an FM does not exist for a particular test, perform the testing in accordance with the method specified in the Specification. When test methods or other standards are referenced in the Specifications without identification of the specific time of issuance, use the most current issuance, including interims or addendums thereto, at the time of bid opening.

**6-2.3 Construction Aggregates:** Aggregates used on Department projects must be in accordance with Rule 14-103, FAC.

## **6-3 Storage of Materials and Samples.**

**6-3.1 Method of Storage:** Store materials in such a manner as to preserve their quality and fitness for the work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific

materials are prescribed under the applicable Specifications. The Department may reject improperly stored materials.

**6-3.2 Use of Right-of-Way for Storage:** If the Engineer allows, the Contractor may use a portion of the right-of-way for storage purposes and for placing the Contractor's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. When used, restore the right-of-way to pre-construction condition at no additional cost to the Department or as specified in the Contract Documents. Provide any additional space required at no expense to the Department.

**6-3.3 Responsibility for Stored Materials:** Accept responsibility for the protection of stored materials. The Department is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored materials.

**6-3.4 Storage Facilities for Samples:** Provide facilities for storage of samples as described in the Contract Documents and warranted by the test methods and Specifications.

#### **6-4 Defective Materials.**

Materials not meeting the requirements of these Specifications will be considered defective. The Engineer will reject all such materials, whether in place or not. Remove all rejected material immediately from the site of the work and from storage areas, at no expense to the Department.

Do not use material that has been rejected and the defects corrected, until the Engineer has approved the material's use. Upon failure to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer has the authority to have the defective material removed and replaced by other forces and deduct the cost of removal and replacement from any moneys due or to become due the Contractor.

As an exception to the above, within 30 calendar days of the termination of the LOT or rejection of the material, the Contractor may submit a proposed scope of work to the Engineer for an engineering or independent laboratory (as approved by the Engineer) analysis to determine the disposition of the material. A Specialty Engineer, who is an independent consultant, or the Contractor's Engineer of Record as stated within each individual Section shall perform any such analysis. Upon the Engineer's approval of the scope of work submitted by the Contractor, the engineering analysis must be completed and the report must be submitted to the Engineer within 45 calendar days, or other time frame as approved by the Engineer. The report must be signed and sealed by the Specialty Engineer. The Engineer will determine the final disposition of the material after review of the information submitted by the Contractor. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review.

#### **6-5 Products and Source of Supply.**

**6-5.1 Source of Supply—Convict Labor (Federal-Aid Contracts Only):** Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these

materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:

1. Materials produced by convicts on parole, supervised release, or probation from a prison or,

2. Materials produced in a qualified prison facility.

The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

**6-5.2 Source of Supply-Steel:** Use steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through the final shaping and coating. If a steel or iron product is taken outside the United States for any manufacturing process, it becomes foreign source material. When using steel or iron materials as a component of any manufactured product (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply. Foreign steel and iron may be used when the total actual cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Submit a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that all steel or iron furnished or incorporated into the furnished product was produced and manufactured in the United States or a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual cost). Submit each such certification to the Engineer prior to incorporating the material or product into the project. Prior to the use of foreign steel or iron materials on a project, submit invoices to document the actual cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project

**6-5.3 Contaminated, Unfit, Hazardous, and Dangerous Materials:** Do not use any material that, after approval and/or placement, has in any way become unfit for use. Do not use materials containing any substance that has been determined to be hazardous by the State of Florida Department of Environmental Protection or the U.S. Environmental Protection Agency (EPA). Provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards, as determined by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA).

## **SECTION 7 – Legal Requirements and Responsibilities to the Public.**

**Compliance with FHWA 1273:** The FHWA-1273 Electronic version, dated May 1, 2012 is posted on the Department's website at the following URL address <http://www.dot.state.fl.us/programmanagement/Implemented/URLinSpecs/Files/FHWA1273.pdf>. Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Comply with the provisions contained in FHWA-1273. If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

**7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds:** Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 16C-52 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

**7-1.7 Insecticides, Herbicides and Fertilizers:**

**7-1.7.1 Insecticides and Herbicides:** Use products found on the following website, <http://state.ceris.purdue.edu/>, approved by the Florida Department of Agriculture for the State of Florida. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work.

Ensure that all insecticides and herbicides are applied in accordance with Chapter 5E-9, Florida Administrative Code. Provide a copy of current certificates upon request, to the Engineer.

Ensure that employees who work with herbicides comply with all applicable Federal, State, and local regulations.

Comply with all regulations and permits issued by any regulatory agency within whose jurisdiction work is being performed. Post all permit placards in a protected, conspicuous location at the work site.

Acquire any permits required for work performed on the rights-of-way within the jurisdiction of National Forests in Florida. Contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office for the proper permits and subsequent approval.

Acquire all permits required for aquatic plant control as outlined in Chapter 62C-20, Florida Administrative Code Rules of the Florida Department of Environmental Protection. Contact the Regional Field Office of Bureau of Invasive Plant Management of the Florida Department of Environmental Protection for proper permits and subsequent approval. If application of synthetic organo-auxin herbicides is necessary, meet the requirements of Chapter 5E-2, Florida Administrative Code.

**7-1.7.2 Fertilizer:** Ensure that all employees applying fertilizer, possess a current Florida Department of Agriculture and Consumer Services Commercial Applicator license in accordance with Section 482.1562, F.S. Upon request, provide a copy of current certificates to the Engineer.



## **7-7 Control of the Contractor's Equipment.**

**7-7.2 Overloaded Equipment:** Do not operate on any road, street or bridge including a Department owned temporary bridge, any hauling unit or equipment loaded in excess of:

1. the maximum weights specified in the Florida Highway Patrol, Commercial Motor Vehicle Manual (Trucking Manual), or
2. lower weight limits legally established and posted for any section of road or bridge by the Department or local authorities.

The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of 7-7.3.

This restriction applies to all roads and bridges inside and outside the Contract limits as long as these roads and bridges are open for public use. The Contractor may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Contractor is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

**7-7.5 Contractor's Equipment on Bridge Structures:** The Contractor's Engineer of Record shall analyze the effect of imposed loads on bridge structures, within the limits of a construction contract, resulting from the following operations:

1. Overloaded Equipment as defined in 7-7.2:
  - a. Operating on or crossing over completed bridge structures.
  - b. Operating on or crossing over partially completed bridge structures.
2. Equipment within legal load limits:
  - a. Operating on or crossing over partially completed bridge structures.
3. Construction cranes:
  - a. Operating on completed bridge structures.
  - b. Operating on partially completed bridge structures.

Any pipe culvert(s) or box culvert(s) qualifying as a bridge under 1-3 is excluded from the requirements above.

A completed bridge structure is a bridge structure in which all elemental components comprising the load carrying assembly have been completed, assembled, and connected in their final position. The components to be considered shall also include any related members transferring load to any bridge structure.

The Contractor's Engineer of Record shall determine the effect that equipment loads have on the bridge structure and develop the procedures for using the loaded equipment without exceeding the structure's design load capacity.

Submit to the Department for approval the design calculations, layout drawings, and erection drawings showing how the equipment is to be used so that the bridge structure will not be overstressed. The Contractor's Engineer of Record shall sign and seal the drawings and the cover sheet of the calculations for the Department's Record Set.



**7-16 Wage Rates for Federal-Aid Projects.**

For this Contract, payment of predetermined minimum wages applies.

The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in table below, as modified up through ten days prior to the opening of bids.

Wage Rate Decision Number	Associated Work
FL170221 08/04/2017 FL221	

Obtain the applicable General Decision(s) (Wage Tables) through the Department’s Office of Construction website and ensure that employees receive the minimum compensation applicable. Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer’s office when needed.

For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department’s Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with 2-4.

Contact the Department’s Prevailing Wage Rate Coordinator at (850) 414-4688 if the Department’s website cannot be accessed or there are questions.

**7-24 Disadvantaged Business Enterprise Program.**

**7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan:** Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

**7-24.2 Required Contract and Subcontract DBE Assurance Language:** In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions'
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible."

**7-24.3 Plan Requirements:** Include the following in the DBE Affirmative Action Program Plan:

1. A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor's organization.

2. The designation of a Liaison Officer within the Contractor's organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

3. Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

a. Soliciting price quotations and arranging a time for the review of Plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

b. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

c. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

d. Encouraging eligible DBEs to apply for certification with the Department.

e. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

**7-24.4 DBE Records and Reports:** Submit the following through the Equal Opportunity Compliance System:

1. DBE Commitments - at or before the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

1. the procedures adopted to comply with these Specifications;
2. the number of subordinated Contracts on Department projects awarded to DBEs;
3. the dollar value of the Contracts awarded to DBEs;

4. the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;
5. a description of the general categories of Contracts awarded to DBEs; and
6. the specific efforts employed to identify and award Contracts to DBEs. Upon request, provide the records to the Department for review. Maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

**7-24.5 Counting DBE Participation and Commercially Useful Functions:** 49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE Commitments, only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Update DBE Commitments to reflect changes to the initial amount that was previously reported or to add DBEs not initially reported.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, for example:

1. The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.
2. The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.
3. When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.
5. The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract may be counted toward the voluntary DBE goal.
6. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
7. Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The

Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

8. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

9. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

10. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

**7-24.6 Prompt Payments:** Meet the requirements of 9-5 for payments to all DBE subcontractors.

**7-25 On-The-Job Training Requirements.**

As part of the Contractor’s equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide On-The-Job Training aimed at developing full journeymen in the type of trade or job classification involved in the work. In the event the Contractor subcontracts a portion of the contract work, it shall determine how many, if any, of the trainees are to be trained by the subcontractor provided, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Section. Ensure that, when feasible, 25% of trainees in each occupation are in their first year of training. The Contractor shall incorporate the requirements of this Section into such subcontract.

The number of trainees will be estimated on the number of calendar days of the contract, the dollar value, and the scope of work to be performed. The trainee goal will be finalized at a Post-Preconstruction Trainee Evaluation Meeting and the goal will be distributed among the work classifications based on the following criteria:

1. Determine the number of trainees on Federal Aid Contract:
  - a. No trainees will be required for contracts with a Contract Time allowance of less than 275 calendar days.
  - b. If the Contract Time allowance is 275 calendar days or more, the number of trainees shall be established in accordance with the following chart:

Estimated Contract Amount	Trainees Required
\$2,000,000 or less	0
Over \$2,000,000 to \$4,000,000	2
Over \$4,000,000 to \$6,000,000	3
Over \$6,000,000 to \$12,000,000	5
Over \$12,000,000 to \$18,000,000	7

Estimated Contract Amount	Trainees Required
Over \$18,000,000 to \$24,000,000	9
Over \$24,000,000 to \$31,000,000	12
Over \$31,000,000 to \$37,000,000	13
Over \$37,000,000 to \$43,000,000	14
Over \$43,000,000 to \$49,000,000	15
Over \$49,000,000 to \$55,000,000	16
Over \$55,000,000 to \$62,000,000	17
Over \$62,000,000 to \$68,000,000	18
Over \$68,000,000 to \$74,000,000	19
Over \$74,000,000 to \$81,000,000	20
Over \$81,000,000 to \$87,000,000	21
Over \$87,000,000 to \$93,000,000	22
Over \$93,000,000 to \$99,000,000	23
Over \$99,000,000 to \$105,000,000	24
Over \$105,000,000 to \$112,000,000	25
Over \$112,000,000 to \$118,000,000	26
Over \$118,000,000 to \$124,000,000	27
Over \$124,000,000 to \$130,000,000	28
Over \$130,000,000 to *	
*One additional trainee per \$6,000,000 of estimated Construction Contract amount over \$130,000,000	

Further, if the Contractor or subcontractor requests to utilize banked trainees as discussed later in this Section, a Banking Certificate will be validated at this meeting allowing credit to the Contractor for previously banked trainees. Banked credits of prime Contractors working as Subcontractors may be accepted for credit. The Contractor's Project Manager, the Construction Project Engineer and the Department's District Contract Compliance Manager will attend this meeting. Within ten days after the Post-Preconstruction Training Evaluation Meeting, the Contractor shall submit to the Department for approval an On-The-Job Training Schedule indicating the number of trainees to be trained in each selected classification and the portion of the Contract Time during which training of each trainee is to take place. This schedule may be subject to change if any of the following occur:

1. When a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
  2. When there is a change in previously approved classifications;
  3. When replacement trainees are added due to voluntary or involuntary termination
- The revised schedule will be resubmitted to and approved by the Department's District Contract Compliance Manager.

The following criteria will be used in determining whether or not the Contractor has complied with this Section as it relates to the number of trainees to be trained:

1. Credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on this Contract. Credit for trainees, over the established number for this Contract, will be carried in a "bank" for the Contractor and credit will be allowed for those surplus trainees in subsequent, applicable projects. A "banked" trainee is described as an

employee who has been trained on a project, over and above the established goal, and for which the Contractor desires to preserve credit for utilization on a subsequent project.

2. Credit will be allowed for each trainee that has been previously enrolled in the Department's approved training program on another contract and continues training in the same job classification and completes their training on a different contract.

3. Credit will be allowed for each trainee who, due to the amount of work available in their classification, is given the greatest practical amount of training on the contract regardless of whether or not the trainee completes training.

4. Credit will be allowed for any training position indicated in the approved On-The-Job Training Schedule, if the Contractor can demonstrate that made a good faith effort to provide training in that classification was made.

5. No credit will be allowed for a trainee whose employment by the Contractor is involuntarily terminated unless the Contractor can clearly demonstrate good cause for this action.

Training and upgrading of minorities, women and economically disadvantaged persons toward journeyman status is a primary objective of this Section. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. If a non-minority male is enrolled into the On-The-Job Training Program, the On-The-Job Training Notification of Personnel Action Form notifying the District Contract Compliance Manager of such action shall be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department's District Contract Compliance Manager. The Contractor will be given an opportunity and will be responsible for demonstrating the steps that it has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Section. This training is not intended, and shall not be used, to discriminate against any applicant for training, whether a minority, woman or disadvantaged person.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status, or have been employed as a journeyman. The Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of a Proficiency Demonstration set up at the completion of training and established for the specific training classification, completion of the minimum hours in a training classification range, and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Contract Compliance Office:

1. Trainee Enrollment and Personnel Action Form

2. Proficiency Demonstration Verification Form indicating completion of each standard established for the classification signed by representatives of both the Contractor and the Department.

The Department and the Contractor shall establish a program that is tied to the scope of the work in the project and the length of operations providing it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classifications concerned, by at least, the minimum hours prescribed for a training classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal Aid highway construction contract. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work on the classifications covered by the program.

A voluntary On-The-Job Training Program is available to a Contractor which has been awarded a state funded project. Through this program, the Contractor will have the option to train employees on state funded projects for "banked credit" as discussed previously in this provision, to be utilized on subsequent Federal Aid Projects where training is required. Those Contractors availing themselves of this opportunity to train personnel on state funded projects and bank trainee hours for credit shall comply with all training criteria set forth in this Section for Federal Aid Projects; voluntary banking may be denied by the Department if staff is not available to monitor compliance with the training criteria.

It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial type positions. Training is permissible in lower level management positions such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classifications, except Common/General Laborer, may be permitted provided that significant and meaningful training is provided and approved by the District Contract Compliance Office.

When approved in advance by the District Contract Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current contract or a Contractor will be allowed to bank trainees who have successfully completed a training program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Contract Compliance Manager. This credit will be given even though the Contractor may receive training program funds from other sources, provided such other source do not specifically prohibit the Contractor from receiving other form of compensation. Offsite training is permissible as long as the training is an integral part of an approved training program and does not compromise a significant part of the overall training. Credit for offsite training indicated above may only be made to the Contractor when it does one or more of the following and the trainees are concurrently employed on a Federal Aid Project:

1. Contributes to the cost of the training,

2. Provides the instruction to the trainee,
3. Pays the trainee's wages during the offsite training period.

The Contractor shall compensate the trainee at no less than the laborer rate established in the Contract at the onset of training. The compensation rate will be increased to the journeyman's wage upon graduation from the training program for the remainder of the time the trainee works in the classification in which they were trained.

The Contractor shall furnish the trainee a copy of the program they will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed. The Contractor shall enroll a trainee in one training classification at a time to completion before the trainee can be enrolled in another classification on the same project.

The Contractor shall maintain records to document the actual hours each trainee is engaged in training on work being performed as a part of this Contract.

The Contractor shall submit to the District Contract Compliance Manager a copy of an On-The-Job Training Notification of Personnel Action form no later than seven days after the effective date of the action when the following actions occur: a trainee is transferred on the project, transferred from the project to continue training on another contract, completes training, is upgraded to journeyman status or voluntary terminates or is involuntary terminated from the project.

The Contractor shall furnish to the District Contract Compliance Manager a copy of a Monthly Time Report for each trainee. The Monthly Time Report for each month shall be submitted no later than the tenth day of the subsequent month. The Monthly Time Report shall indicate the phases and sub-phases of the number of hours devoted to each proficiency. Highway or Bridge Carpenter Helper, Mechanic Helper, Rodman/Chainman, and Timekeeper classifications will not be approved for the On-The-Job Training Program.

The number of trainees may be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

The Contractor will have fulfilled the responsibilities of this Specification when acceptable training has been provided to the trainee as specified above.

#### **7-26 Cargo Preference Act – Use of United States-flag vessels.**

Pursuant to Title 46CFR Part 381, the Contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments



originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

### **7-29 E-Verify.**

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

### **7-31 Title VI Assurance – DOT 1050.2A, Appendix A and Appendix E.**

**7-31.1 Appendix A:** During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the US Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the basis of race, color, national origin or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for subcontractors, including procurements of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, or sex.

4. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, order and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the

Contractor shall so certify to the Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Florida Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the Contractor under the Contract until the Contractor complies, or

b. cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of this Appendix in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration 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 supplier as a result of such direction, the Contractor may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**7-31.2 Appendix E:** During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor" agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired of Federal or Federal-aid programs and projects);

3. Federal-Aid Highway Act of 1973, (23 U.S.C § 324 et seq.), (prohibits discrimination on the basis of sex);

4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982, (49 U.S.C. 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color national origins or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-

aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

## **SECTION 8 – PROSECUTION OF WORK.**

### **8-1 Subletting or Assigning of Contracts.**

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by the Department for this purpose. With the Engineer’s acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with its own organization work amounting to not less than 40% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the Department, for purposes of the Department’s consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. All other agreements must be in writing and reference all applicable Contract provisions. Upon request, furnish the Department with a copy of the subcontract and agreement. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract.

The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor, and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

**8-7.3.2 Contract Time Extensions:** The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the

Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations as defined in 8-6.4, in establishing Contract Time. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations as defined in 8-6.4 that prevent the Contractor from productively performing controlling items of work resulting in:

1. The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items; or
2. The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items. No additional compensation will be made for delays caused by the effects of inclement weather.

The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall submit substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor submits documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the effect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

1. Delays are the result of either utility work that was not detailed in the Plans, or utility work that was detailed in the Plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.

2. Utility work actually affected progress toward completion of controlling work items.

3. The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

Furthermore, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), as stated in FDOT Section 8-3.2 "Submission of Working Schedule", is a condition precedent to the Contractor having any right to the granting of an extension of Contract Time or any monetary compensation arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to

time or money for such period of potential impact being limited solely to the Department’s analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the Department’s determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department’s determination was without any reasonable factual basis.

**8-10 Liquidated Damages for Failure to Complete the Work.**

**8-10.2 Amount of Liquidated Damages:** Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge Per Calendar Day
\$50,000 and under .....	\$763
Over \$50,000 but less than \$250,000 .....	\$958
\$250,000 but less than \$500,000.....	\$1,099
\$500,000 but less than \$2,500,000 .....	\$1,584
\$2,500,000 but less than \$5,000,000 .....	\$2,811
\$5,000,000 but less than \$10,000,000 .....	\$3,645
\$10,000,000 but less than \$15,000,000 .....	\$4,217
\$15,000,000 but less than \$20,000,000 .....	\$4,698
\$20,000,000 and over .....	\$6,323 plus 0.00005 of any amount over \$20 million (Round to nearest whole dollar)

**Section 9 – Measurement and Payment.**

**9-1.3 Determination of Pay Areas:**

**9-1.3.1 Final Calculation:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be determined by calculation, the Engineer will use lengths and widths in the calculations based on the station to station dimensions shown on the plans; the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the surface of the completed work within the neat lines shown on the plans or designated by the Engineer. The Engineer will use the method or combination of methods of measurement that reflect, with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

**9-1.3.2 Plan Quantity:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be the plan quantity, the Engineer will determine the final pay quantity based on the plan quantity subject to the provisions of 9-3.2. Generally, the Engineer will calculate the plan quantity using lengths based on station to station dimensions and widths based on neat lines shown in the plans.

**9-3 Compensation for Altered Quantities.**

**9-3.1 General:** When alteration in plans or quantities of work not requiring a supplemental agreement as hereinbefore provided for are offered and performed, the Contractor shall accept payment in full at Contract unit bid prices for the actual quantities of

work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefore, or from any other cause.

Compensation for alterations in plans or quantities of work requiring supplemental agreements shall be stipulated in such agreement, except when the Contractor proceeds with the work without change of price being agreed upon, the Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.

**9-3.2 Payment Based on Plan Quantity:**

**9-3.2.1 Error in Plan Quantity:** As used in this Article, the term “substantial error” is defined as the smaller of (a) or (b) below:

- (a) a difference between the original plan quantity and final quantity of more than 5%,
- (b) a change in quantity which causes a change in the amount payable of more than \$5,000.

On multiple job Contracts, changes made to an individual pay item due to substantial errors will be based on the entire Contract quantity for that pay item. Where the pay quantity for any item is designated to be the original plan quantity, the Department will revise such quantity only in the event that the Department determines it is in substantial error. In general, the Department will determine such revisions by final measurement, plan calculations, or both, as additions to or deductions from plan quantities.

In the event that either the Department or the Contractor contends that the plan quantity for any item is in error and additional or less compensation is thereby due, the claimant shall submit, at their own expense, evidence of such in the form of acceptable and verifiable measurements or calculations. The Department will not revise the plan quantity solely on the basis of a particular method of construction that the Contractor selects. For earthwork items, the claimant must note any differences in the original ground surfaces from that shown in the original plan cross-sections that would result in a substantial error to the plan quantity, and must be properly documented by appropriate verifiable level notes, acceptable to both the Contractor and the Department, prior to disturbance of the original ground surface by construction operations. The claimant shall support any claim based upon a substantial error for differences in the original ground surface by documentation as provided above.

**9-3.2.2 Authorized Changes in Limits of Work:** Where the Department designates the pay quantity for any item to be the original plan quantity and authorizes a plan change which results in an increase or decrease in the quantity of that item, the Department will revise the plan quantity accordingly. In general, the Department will determine such revisions by final measurement, plan calculations or both.

**9-3.2.3 Specified Adjustments to Pay Quantities:** Do not apply the limitations specified in 9-3.2.1 and 9-3.2.2 to the following:

(1) Where these Specifications or Special Provisions provide that the Department determines the pay quantity for an item on the basis of area of finished work adjusted in accordance with the ratio of measured thickness to nominal thickness.

(2) Where these Specifications provide for a deduction due to test results falling outside of the allowable specified tolerances.

(3) To payment for extra length fence posts, as specified in 550-6.3.

### **9-3.3 Lump Sum Quantities:**

**9-3.3.1 Error in Lump Sum Quantity:** Where the Department designates the pay quantity for an item to be a lump sum and the plans show an estimated quantity, the Department will adjust the lump sum compensation only in the event that either the Contractor submits satisfactory evidence or the Department determines and furnishes satisfactory evidence that the lump sum quantity shown is in substantial error as defined in 9-3.2.1.

**9-3.3.2 Authorized Changes in Work:** Where the Department designates the pay quantity for an item to be a lump sum and the Plans show an estimated quantity, the Department will adjust compensation for that item proportionately when an authorized plan change is made which results in an increase or decrease in the quantity of that item. When the Plans do not show an estimated plan quantity or the applicable specifications do not provide adjustments for contingencies, the Department will compensate for any authorized plan change resulting in an increase or decrease in the cost of acceptably completing the item by establishing a new unit price through a supplemental agreement as provided in 4-3.2.

## **9-5 Partial Payments.**

**9-5.1 General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.

Retainage will not be withheld until the percent of Contract Time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of Contract Time used exceeds the percent of Contract amount earned by more than 15%. Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

**9-5.2 Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may



disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory.

**9-5.3 Withholding Payment:**

**9-5.3.1 Withholding Payment for Defective Work:** If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**9-5.3.2 Withholding Payment for Failure to Comply:** The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

1. comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job Training, and Affirmative Action;
2. comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;
3. comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and
4. comply with or make a good faith effort to meet On-The-Job Training goals.

The Department will withhold progress payments until the Contractor has satisfied the above conditions.

**9-5.4 Release of Retainage After Acceptance:** When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due and Form 21-A release) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in 9-5.3.

The Department will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days.

The Department may deduct from payment estimates any sums that the Contractor owes to the Department on any account. Where more than one project or job (separate job number) is included in the Contract, the Department will distribute the reduced retainage as provided in the first paragraph of this Subarticle to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

**9-5.5 Partial Payments for Delivery of Certain Materials:**

**9-5.5.1 General:** The Department will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

1. There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
2. The stockpiled material must be approved as meeting applicable specifications.
3. The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
4. The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.
5. Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
6. Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**9-5.5.2 Partial Payment Amounts:** The following partial payment restrictions apply:

1. Partial payments less than \$5,000 for any one month will not be processed.
2. Partial payments for structural steel and precast pre-stressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid price of the item in which the material is to be used.
3. Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Department requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

**9-5.5.3 Off Site Storage:** If the conditions of 9-5.5.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of 9-5.5.1 and the following conditions are met:

1. Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.
2. The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials:

“Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement.”

“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor’s obligation to furnish the materials described in this agreement to the Florida Department of Transportation.”

3. The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

**9-5.6 Certification of Payment to Subcontractors:** The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor’s work. Provide this certification in the form designated by the Department.

Within 30 days of the Contractor’s receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30-day period.

The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

**SUPERPAVE ASPHALT FOR LAP (OFF-SYSTEM).**  
**(REV 1-26-15) (FA 1-29-15)**

**SECTION 334**  
**SUPERPAVE ASPHALT FOR LAP (OFF-SYSTEM)**

**334-1 Description.**

**334-1.1 General:** Construct a Superpave asphalt pavement (consisting of either Hot Mix Asphalt (HMA) or Warm Mix Asphalt (WMA)) based on the type of work specified in the Contract and the Asphalt Work Categories as defined below. Meet the applicable requirements for plants, equipment, and construction requirements as defined below. Use an asphalt mix, either HMA or WMA, which meets the requirements of this specification.

**334-1.2 Asphalt Work Mix Categories:** Construction of asphalt pavement will fall into one of the following work categories:

**334-1.2.1 Asphalt Work Category 1:** Includes the construction of shared use paths and miscellaneous asphalt.

**334-1.2.2 Asphalt Work Category 2:** Includes the construction of new asphalt turn lanes, paved shoulders and other non-mainline pavement locations.

**334-1.2.3 Asphalt Work Category 3:** Includes the construction of new mainline asphalt pavement lanes, milling and resurfacing.

**334-1.3 Mix Types:** Use the appropriate asphalt mix as shown in Table 334-1.

<b>Table 334-1 Asphalt Mix Types</b>			
<b>Asphalt Work Category</b>	<b>Mix Types</b>	<b>Traffic Level</b>	<b>ESALs (millions)</b>
1	Type SP-9.5	A	<0.3
2	Structural Mixes: Types SP-9.5 or SP-12.5 Friction Mixes: Types FC-9.5 or FC-12.5	B	0.3 to <3
3	Structural Mixes: Types SP-9.5 or SP-12.5 Friction Mixes: Types FC-9.5 or FC-12.5	C	≥3

A Type SP or FC mix one traffic level higher than the traffic level specified in the Contract may be substituted, at no additional cost (i.e. Traffic Level B may be substituted for Traffic Level A, etc.). Traffic levels are as defined in Section 334 of the Florida Department of Transportation’s (FDOT’s) Specifications.

**334-1.4 Gradation Classification:** The Superpave mixes are classified as fine and are defined in 334-3.2.2. The equivalent AASHTO nominal maximum aggregate size Superpave mixes are as follows:

- Type SP-9.5, FC-9.5      9.5 mm
- Type SP-12.5, FC-12.5      12.5 mm

**334-1.5 Thickness:** The total pavement thickness of the asphalt pavement will be based on a specified spread rate or plan thickness as shown in the Contract Documents. Before paving, propose a spread rate or thickness for each individual layer meeting the requirements of this specification, which when combined with other layers (as applicable) will equal the plan spread rate or thickness. When the total pavement thickness is specified as plan thickness, the plan thickness and individual layer thickness will be converted to spread rate using the following equation:

$$\text{Spread rate (lbs/yd}^2\text{)} = t \times G_{mm} \times 43.3 \text{ where:}$$

t = Thickness (in.) (Plan thickness or individual layer thickness)  
 $G_{mm}$  = Maximum specific gravity from the mix design

For target purposes only, spread rate calculations shall be rounded to the nearest whole number.

**334-1.5.1 Layer Thicknesses:** Unless otherwise called for in the Contract Documents, the allowable layer thicknesses for asphalt mixtures are as follows:

- Type SP-9.5, FC-9.5      3/4 to 1-1/2 inches
- Type SP-12.5, FC-12.5    1-1/2 to 2-1/2 inches

**334-1.5.2 Additional Requirements:** The following requirements also apply to asphalt mixtures:

1. When construction includes the paving of adjacent shoulders (less than or equal to 5 feet wide), the layer thickness for the upper pavement layer and shoulder shall be the same and paved in a single pass, unless otherwise called for in the Contract Documents.
2. For overbuild layers, use the minimum and maximum layer thicknesses as specified above unless called for differently in the Contract Documents. On variable thickness overbuild layers, the minimum allowable thickness may be reduced by 1/2 inch, and the maximum allowable thickness will be as specified below, unless called for differently in the Contract Documents.

- Type SP-9.5.....3/8 to 2 inches
- Type SP-12.5.....1/2 to 3 inches

3. Variable thickness overbuild layers may be tapered to zero thickness provided the contract documents require a minimum of 1-1/2 inches of mix placed over the variable thickness overbuild layer.

**334-1.6 Weight of Mixture:** The weight of the mixture shall be determined as provided in 320-3.2 of the FDOT Specifications.

**334-2 Materials.**

**334-2.1 Superpave Asphalt Binder:** Unless specified elsewhere in the Contract or in 334-2.3.3, use a PG 67-22 asphalt binder from the FDOT's Approved Products List (APL). If the Contract calls for an alternative asphalt binder, meet the requirements of FDOT Specifications Section 336 or 916, as appropriate.

**334-2.2 Aggregate:** Use aggregate capable of producing a quality pavement. For Type FC mixes, use an aggregate blend that consists of crushed granite, crushed Oolitic limestone, other crushed materials (as approved by FDOT for friction courses per Rule 14-103.005, Florida Administrative Code), or a combination of the above. Crushed limestone from the Oolitic formation may be used if it contains a minimum of 12% silica

material as determined by FDOT Test Method FM 5-510 and FDOT grants approval of the source prior to its use. As an exception, mixes that contain a minimum of 60% crushed granite may either contain:

1. Up to 40% fine aggregate from other sources; or,
2. A combination of up to 20% RAP and the remaining fine aggregate from other sources.

A list of aggregates approved for use in friction courses may be available on the FDOT’s State Materials Office website. The URL for obtaining this information, if available, is: <ftp://ftp.dot.state.fl.us/fdot/smo/website/sources/frictioncourse.pdf>.

**334-2.3 Reclaimed Asphalt Pavement (RAP) Material:**

**334-2.3.1 General requirements:** RAP may be used as a component of the asphalt mixture, provided the RAP meets the following requirements:

1. When using a PG 76-22 (PMA), or PG 76-22 (ARB) asphalt binder, limit the amount of RAP material used in the mix to a maximum of 20% by weight of total aggregate. As an exception, amounts greater than 20% RAP by weight of total aggregate can be used if no more than 20% by weight of total asphalt binder comes from the RAP material.

2. Provide stockpiled RAP material that is reasonably consistent in characteristics and contains no aggregate particles which are soft or conglomerates of fines.

3. Provide RAP material having a minimum average asphalt binder content of 4.0% by weight of RAP. As an exception, when using fractionated RAP, the minimum average asphalt binder content for the coarse portion of the RAP shall be 2.5% by weight of the coarse portion of the RAP. The coarse portion of the RAP shall be the portion of the RAP retained on the No. 4 sieve. The Engineer may sample the stockpile to verify that this requirement is met.

4. Use a grizzly or grid over the RAP cold bin, in-line roller crusher, screen, or other suitable means to prevent oversized RAP material from showing up in the completed recycle mixture. If oversized RAP material appears in the completed recycle mix, take the appropriate corrective action immediately. If the appropriate corrective actions are not immediately taken, stop plant operations.

**334-2.3.2 Material Characterization:** Assume responsibility for establishing the asphalt binder content, gradation, and bulk specific gravity ( $G_{sb}$ ) of the RAP material based on a representative sampling of the material.

**334-2.3.3 Asphalt Binder for Mixes with RAP:** Select the appropriate asphalt binder grade based on Table 334-2. The Engineer reserves the right to change the asphalt binder type and grade during production based on characteristics of the RAP asphalt binder.

<b>Table 334-2</b>	
<b>Asphalt Binder Grade for Mixes Containing RAP</b>	
Percent RAP	Asphalt Binder Grade
0 – 15	PG 67-22
16 – 30	PG 58-22
> 30	PG 52-28

**334-3 Composition of Mixture.**

**334-3.1 General:** Compose the asphalt mixture using a combination of aggregates, mineral filler, if required, and asphalt binder material. Size, grade and combine the aggregate

fractions to meet the grading and physical properties of the mix design. Aggregates from various sources may be combined.

**334-3.2 Mix Design:**

**334-3.2.1 General:** Design the asphalt mixture in accordance with AASHTO R 35-12, except as noted herein. Submit the proposed mix design with supporting test data indicating compliance with all mix design criteria to the Engineer. Prior to the production of any asphalt mixture, obtain the Engineer’s conditional approval of the mix design. If required by the Engineer, send representative samples of all component materials, including asphalt binder to a laboratory designated by the Engineer for verification. As an exception to these requirements, use a currently approved FDOT Mix Design.

Warm mix technologies (additives, foaming techniques, etc.) listed on the Department’s website may be used in the production of the mix. The URL for obtaining this information, is:

<http://www.dot.state.fl.us/statematerialsoffice/quality/programs/warmmixasphalt/index.shtm>

The Engineer will consider any marked variations from original test data for a mix design or any evidence of inadequate field performance of a mix design as sufficient evidence that the properties of the mix design have changed, and at his discretion, the Engineer may no longer allow the use of the mix design.

**334-3.2.2 Mixture Gradation Requirements:** Combine the aggregates in proportions that will produce an asphalt mixture meeting all of the requirements defined in this specification and conform to the gradation requirements at design as defined in AASHTO M 323-12, Table 3. Aggregates from various sources may be combined.

**334-3.2.2.1 Mixture Gradation Classification:** Plot the combined mixture gradation on an FHWA 0.45 Power Gradation Chart. Include the Control Points from AASHTO M323-12, Table-3, as well as the Primary Control Sieve (PCS) Control Point from AASHTO M323-12, Table 4. Fine mixes are defined as having a gradation that passes above or through the primary control sieve control point.

**334-3.2.3 Gyrotory Compaction:** Compact the design mixture in accordance with AASHTO T312-12, with the following exceptions: use the number of gyrations at  $N_{design}$  as designed in Table 334-3.

<b>Table 334-3</b>	
<b>Gyrotory Compaction Requirements</b>	
Traffic Level	$N_{design}$ Number of Gyration
A	50
B	65
C	75

**334-3.2.4 Design Criteria:** Meet the requirements for nominal maximum aggregate size as defined in AASHTO M323-12, as well as for relative density, VMA, VFA, and dust-to-binder ratio as specified in AASHTO M323-12, Table 6.  $N_{initial}$  and  $N_{maximum}$  requirements are not applicable.

**334-3.2.5 Moisture Susceptibility:** Test 4 inch specimens in accordance with FDOT Test Method FM 1-T 283. Provide a mixture having a retained tensile strength ratio of at least 0.80 and a minimum tensile strength (unconditioned) of 100 pounds per square inch.

If necessary, add a liquid anti-stripping agent from the FDOT's APL or hydrated lime in order to meet these criteria.

In lieu of moisture susceptibility testing, add a liquid anti-stripping agent from the FDOT's APL. Add 0.5% liquid anti-stripping agent by weight of asphalt binder.

**334-3.2.6 Additional Information:** In addition to the requirements listed above, provide the following information on each mix design:

1. The design traffic level and the design number of gyrations ( $N_{\text{design}}$ ).
2. The source and description of the materials to be used.
3. The FDOT source number and the FDOT product code of the aggregate components furnished from an FDOT approved source (if required).
4. The gradation and proportions of the raw materials as intended to be combined in the paving mixture. The gradation of the component materials shall be representative of the material at the time of use. Compensate for any change in aggregate gradation caused by handling and processing as necessary.
5. A single percentage of the combined mineral aggregate passing each specified sieve. Degradation of the aggregate due to processing (particularly material passing the No. 200 sieve) should be accounted for and identified.
6. The bulk specific gravity ( $G_{\text{sb}}$ ) value for each individual aggregate and RAP component.
7. A single percentage of asphalt binder by weight of total mix intended to be incorporated in the completed mixture, shown to the nearest 0.1%.
8. A target temperature for the mixture at the plant (mixing temperature) and a target temperature for the mixture at the roadway (compaction temperature). Do not exceed a target temperature of 330°F for PG 76-22 (PMA) and PG 76-22 (ARB) asphalt binders, and 315°F for unmodified asphalt binders.
9. Provide the physical properties achieved at four different asphalt binder contents. One shall be at the optimum asphalt content, and must conform to all specified physical requirements.
10. The name of the mix designer.
11. The ignition oven calibration factor.
12. The warm mix technology, if used.

#### **334-4 Process Control.**

Assume full responsibility for controlling all operations and processes such that the requirements of these Specifications are met at all times. Perform any tests necessary at the plant and roadway to control the process.

#### **334-5 General Construction Requirements.**

**334-5.1 Weather Limitations:** Do not transport asphalt mix from the plant to the roadway unless all weather conditions are suitable for the paving operations.

##### **334-5.2 Limitations of Paving Operations:**

**334-5.2.1 General:** Spread the mixture only when the surface upon which it is to be placed has been previously prepared, is intact, firm, dry, clean, and the tack, with acceptable spread rate, is properly broken. Ensure all granular base materials are properly primed and all asphalt base materials are properly tacked, prior to paving.



**334-5.2.2 Air Temperature:** Place the mixture only when the air temperature in the shade and away from the artificial heat meets the requirements of Table 334-4. The minimum ambient temperature requirement may be reduced by 5°F when using a warm mix technology, if mutually agreed to by both the Engineer and the Contractor.

**Table 334-4  
Ambient Air Temperature Requirements for Paving**

Layer Thickness or Asphalt Binder Type	Minimum Temperature (°F)
≤1 inch	50
Any mixture > 1 inch containing a PG asphalt binder with a high temperature designation ≥ 76°C	45
Any mixture > 1 inch containing a PG asphalt binder with a high temperature designation < 76°C	40

**334-5.3 Mix Temperature:** Heat and combine the ingredients of the mix in such a manner as to produce a mixture with a temperature at the plant and at the roadway, within a range of plus or minus 30°F from the target temperature as shown on the mix design. Reject all loads outside of this range. For warm mix asphalt, the Contractor may produce the first five loads of the production day and at other times when approved by the Engineer, at a hot mix asphalt temperature not to exceed 330°F for purposes of heating the asphalt paver. For these situations, the upper tolerance of +30°F does not apply.

**334-5.4 Transportation of the Mixture:** Transport the mix in trucks of tight construction, which prevents the loss of material and the excessive loss of heat and previously cleaned of all foreign material. After cleaning, thinly coat the inside surface of the truck bodies with soapy water or an asphalt release agent as needed to prevent the mixture from adhering to the beds. Do not allow excess liquid to pond in the truck body. Do not use a release agent that will contaminate, degrade, or alter the characteristics of the asphalt mix or is hazardous or detrimental to the environment. Petroleum derivatives (such as diesel fuel), solvents, and any product that dissolves asphalt are prohibited. Provide each truck with a tarpaulin or other waterproof cover mounted in such a manner that it can cover the entire load when required. When in place, overlap the waterproof cover on all sides so it can be tied down. Cover each load during cool and cloudy weather and at any time it appears rain is likely during transit with a tarpaulin or waterproof cover. Cover and tie down all loads of friction course mixtures.

**334-5.5 Preparation of Surfaces Prior to Paving:**

**334-5.5.1 Cleaning:** Clean the surface of all loose and deleterious material by the use of power brooms or blowers, supplemented by hand brooming where necessary.

**334-5.5.2 Patching and Leveling Courses:** As shown in the plans, bring the existing surface to proper grade and cross-section by the application of patching or leveling courses.

**334-5.5.3 Application over Surface Treatment:** Where an asphalt mix is to be placed over a surface treatment, sweep and dispose of all loose material from the paving area.

**334-5.5.4 Tack Coat:** Use a rate of application as defined in Table 334-5. Control the rate of application to be within plus or minus 0.01 gallon per square yard of the target application rate. The target application rate may be adjusted by the Engineer to meet specific field conditions. Determine the rate of application as needed to control the operation. When using PG 52-28, multiply the target rate of application by 0.6.

<b>Table 334-5 Tack Coat Application Rates</b>		
Asphalt Mixture Type	Underlying Pavement Surface	Target Tack Rate (gal/yd <sup>2</sup> )
Base Course, Structural Course, Dense Graded Friction Course	Newly Constructed Asphalt Layers	0.03 minimum
	Milled Surface or Oxidized and Cracked Pavement	0.06
	Concrete Pavement	0.08

**334-5.6 Placing Mixture:**

**334-5.6.1 Alignment of Edges:** With the exception of pavements placed adjacent to curb and gutter or other true edges, place all pavements by the stringline method to obtain an accurate, uniform alignment of the pavement edge. Control the unsupported pavement edge to ensure that it will not deviate more than plus or minus 1.5 inches from the stringline.

**334-5.6.2 Rain and Surface Conditions:** Immediately cease transportation of asphalt mixtures from the plant when rain begins at the roadway. Do not place asphalt mixtures while rain is falling, or when there is water on the surface to be covered. Once the rain has stopped and water has been removed from the tacked surface to the satisfaction of the Engineer and the temperature of the mixture caught in transit still meets the requirements as specified in 334-5.3, the Contractor may then place the mixture caught in transit.

**334-5.6.3 Checking Depth of Layer:** Check the depth of each layer at frequent intervals to ensure a uniform spread rate that will meet the requirements of the Contract.

**334-5.6.4 Hand Work:** In limited areas where the use of the spreader is impossible or impracticable, spread and finish the mixture by hand.

**334-5.6.5 Spreading and Finishing:** Upon arrival, dump the mixture in the approved paver, and immediately spread and strike-off the mixture to the full width required, and to such loose depth for each course that, when the work is completed, the required weight of mixture per square yard, or the specified thickness, is secured. Carry a uniform amount of mixture ahead of the screed at all times.

**334-5.6.6 Thickness Control:** Ensure the spread rate is within 10% of the target spread rate, as indicated in the Contract. When calculating the spread rate, use, at a minimum, an average of five truckloads of mix. When the average spread rate is beyond plus or minus 10% of the target spread rate, monitor the thickness of the pavement layer closely and adjust the construction operations.

If the Contractor fails to maintain an average spread rate within plus or minus 10% of the target spread rate for two consecutive days, the Engineer may elect to stop the construction operation at any time until the issue is resolved.

When the average spread rate for the total structural or friction course pavement thickness exceeds the target spread rate by plus or minus 50 pounds per square yard for layers greater than or equal to 2.5 inches or exceeds the target spread rate by plus or minus 25 pounds per square yard for layers less than 2.5 inches, address the unacceptable pavement in accordance with 334-5.10.4, unless an alternative approach is agreed upon by the Engineer.

### **334-5.7 Leveling Courses:**

**334-5.7.1 Patching Depressions:** Before spreading any leveling course, fill all depressions in the existing surface as shown in the plans.

**334-5.7.2 Spreading Leveling Courses:** Place all courses of leveling with an asphalt paver or by the use of two motor graders, one being equipped with a spreader box. Other types of leveling devices may be used upon approval by the Engineer.

**334-5.7.3 Rate of Application:** When using Type SP-9.5 for leveling, do not allow the average spread of a layer to be less than 50 pounds per square yard or more than 75 pounds per square yard. The quantity of mix for leveling shown in the plans represents the average for the entire project; however, the Contractor may vary the rate of application throughout the project as directed by the Engineer. When leveling in connection with base widening, the Engineer may require placing all the leveling mix prior to the widening operation.

**334-5.8 Compaction:** For each paving or leveling train in operation, furnish a separate set of rollers, with their operators.

When density testing for acceptance is required, select equipment, sequence, and coverage of rolling to meet the specified density requirement. Regardless of the rolling procedure used, complete the final rolling before the surface temperature of the pavement drops to the extent that effective compaction may not be achieved or the rollers begin to damage the pavement.

When density testing for acceptance is not required, use a rolling pattern approved by the Engineer.

Use hand tamps or other satisfactory means to compact areas which are inaccessible to a roller, such as areas adjacent to curbs, headers, gutters, bridges, manholes, etc.

### **334-5.9 Joints.**

**334-5.9.1 Transverse Joints:** Construct smooth transverse joints, which are within 3/16 inch of a true longitudinal profile when measured with a 15 foot manual straightedge meeting the requirements of FDOT Test Method FM 5-509. These requirements are waived for transverse joints at the beginning and end of the project and at the beginning and end of bridge structures, if the deficiencies are caused by factors beyond the control of the Contractor such as no milling requirement, as determined by the Engineer. When smoothness requirements are waived, construct a reasonably smooth transitional joint.

**334-5.9.2 Longitudinal Joints:** For all layers of pavement except the leveling course, place each layer so that longitudinal construction joints are offset 6 to 12 inches laterally between successive layers. Do not construct longitudinal joints in the wheel paths. The Engineer may waive these requirements where offsetting is not feasible due to the sequence of construction.

**334-5.10 Surface Requirements:** Construct a smooth pavement with good surface texture and the proper cross slope.

**334-5.10.1 Texture of the Finished Surface of Paving Layers:** Produce a finished surface of uniform texture and compaction with no pulled, torn, raveled, crushed or loosened portions and free of segregation, bleeding, flushing, sand streaks, sand spots, or ripples. Correct any area of the surface that does not meet the foregoing requirements in accordance with 334-5.10.4.

In areas not defined to be a density testing exception per 334-6.4.1, obtain for the Engineer, three 6-inch diameter roadway cores at locations visually identified by the Engineer to be segregated. The Engineer will determine the density of each core in accordance with FDOT Test Method FM 1-T 166 and calculate the percent  $G_{mm}$  of the segregated area using the average  $G_{mb}$  of the roadway cores and the representative PC  $G_{mm}$  for the questionable material. If the average percent  $G_{mm}$  is less than 90.0, address the segregated area in accordance with 334-5.10.4.

**334-5.10.2 Cross Slope:** Construct a pavement surface with cross slopes in compliance with the requirements of the Contract Documents.

**334-5.10.3 Pavement Smoothness:** Construct a smooth pavement meeting the requirements of this Specification. Furnish a 15 foot manual and a 15 foot rolling straightedge meeting the requirements of FDOT Test Method FM 5-509.

**334-5.10.3.1 Straightedge Testing:**

**334-5.10.3.1.1 Acceptance Testing:** Perform straightedge testing in the outside wheel path of each lane for the final (top) layer of the pavement. Test all pavement lanes where the width is constant using a rolling straightedge and document all deficiencies on a form approved by the Engineer. Notify the Engineer of the location and time of all straightedge testing a minimum of 48 hours before beginning testing.

**334-5.10.3.1.2 Final (Top) Pavement Layer:** At the completion of all paving operations, straightedge the final (top) layer either behind the final roller of the paving train or as a separate operation. Address all deficiencies in excess of 3/16 inch in accordance with 334-5.10.4, unless waived by the Engineer. Retest all corrected areas.

**334-5.10.3.1.3 Straightedge Exceptions:** Straightedge testing will not be required in the following areas: shoulders, intersections, tapers, crossovers, sidewalks, shared use paths, parking lots and similar areas, or in the following areas when they are less than 250 feet in length: turn lanes, acceleration/deceleration lanes and side streets. The limits of the intersection will be from stop bar to stop bar for both the mainline and side streets. In the event the Engineer identifies a surface irregularity in the above areas that is determined to be objectionable, straightedge and address all deficiencies in excess of 3/8 inch in accordance with 334-5.10.4.

**334-5.10.4 Correcting Unacceptable Pavement:** Correct deficiencies in the pavement layer by removing and replacing the full depth of the layer, extending a minimum of 50 feet on both sides (where possible) of the defective area for the full width of the paving lane, at no additional cost.

**334-6 Acceptance of the Mixture.**

**334-6.1 General:** The asphalt mixture will be accepted based on the Asphalt Work Category as defined below:

1. Asphalt Work Category 1 – Certification by the Contractor as defined in 334-6.2.
2. Asphalt Work Category 2 – Certification and process control testing by the Contractor as defined in 334-6.3.
3. Asphalt Work Category 3 – Process control testing by the Contractor and acceptance testing by the Engineer as defined in 334-6.4.

**334-6.2 Certification by the Contractor:** On Asphalt Work Category 1 construction, the Engineer will accept the mix on the basis of visual inspection. Submit a Notarized Certification of Specification Compliance letter on company letterhead to the Engineer

stating that all material produced and placed on the project meets the requirements of the Specifications. The Engineer may run independent tests to determine the acceptability of the material.

**334-6.3 Certification and Process Control Testing by the Contractor:** On Asphalt Work Category 2 construction, submit a Notarized Certification of Specification Compliance letter on company letterhead to the Engineer stating that all material produced and placed on the project meets the requirements of the Specifications, along with supporting test data documenting all process control testing as described in 334-6.3.1. If required by the Contract, utilize an Independent Laboratory as approved by the Engineer for the process control testing. The mix will also require visual acceptance by the Engineer. In addition, the Engineer may run independent tests to determine the acceptability of the material. Material failing to meet these acceptance criteria will be addressed as directed by the Engineer such as but not limited to acceptance at reduced pay, delineation testing to determine the limits of the questionable material, removal and replacement at no cost to the agency, or performing an Engineering analysis to determine the final disposition of the material.

**334-6.3.1 Process Control Sampling and Testing Requirements:** Perform process control testing at a frequency of once per day. Obtain the samples in accordance with FDOT Method FM 1-T 168. Test the mixture at the plant for gradation (P<sub>8</sub> and P<sub>200</sub>) and asphalt binder content (P<sub>b</sub>). Measure the roadway density with 6 inch diameter roadway cores at a minimum frequency of once per 1,500 feet of pavement with a minimum of three cores per day.

Determine the asphalt binder content of the mixture in accordance with FDOT Method FM 5-563. Determine the gradation of the recovered aggregate in accordance with FDOT Method FM 1-T 030. Determine the roadway density in accordance with FDOT Method FM 1-T 166. The minimum roadway density will be based on the percent of the maximum specific gravity (G<sub>mm</sub>) from the approved mix design. If the Contractor or Engineer suspects that the mix design G<sub>mm</sub> is no longer representative of the asphalt mixture being produced, then a new G<sub>mm</sub> value will be determined from plant-produced mix, in accordance with FDOT Method FM 1-T 209, with the approval of the Engineer. Roadway density testing will not be required in certain situations as described in 334-6.4.1. Assure that the asphalt binder content, gradation and density test results meet the criteria in Table 334-4.

<b>Table 334-4</b>	
<b>Process Control and Acceptance Values</b>	
Characteristic	Tolerance
Asphalt Binder Content (percent)	Target ± 0.55
Passing No. 8 Sieve (percent)	Target ± 6.00
Passing No. 200 Sieve (percent)	Target ± 2.00
Roadway Density (daily average)	Minimum 90.0% of G <sub>mm</sub>

**334-6.4 Process Control Testing by the Contractor and Acceptance Testing by the Engineer:** On Asphalt Work Category 3, perform process control testing as described in 334-6.3.1. In addition, the Engineer will accept the mixture at the plant with respect to gradation (P<sub>8</sub> and P<sub>200</sub>) and asphalt binder content (P<sub>b</sub>). The mixture will be accepted on the roadway with respect to density. The Engineer will sample and test the material as

described in 334-6.3.1. The Engineer will randomly obtain at least one set of samples per day. Assure that the asphalt content, gradation and density test results meet the criteria in Table 334-4. Material failing to meet these acceptance criteria will be addressed as directed by the Engineer such as but not limited to acceptance at reduced pay, delineation testing to determine the limits of the questionable material, removal and replacement at no cost to the agency, or performing an Engineering analysis to determine the final disposition of the material.

**334-6.4.1 Acceptance Testing Exceptions:** When the total quantity of any mix type in the project is less than 500 tons, the Engineer will accept the mix on the basis of visual inspection. The Engineer may run independent tests to determine the acceptability of the material.

Density testing for acceptance will not be performed on widening strips or shoulders with a width of 5 feet or less, variable thickness overbuild courses, leveling courses, any asphalt layer placed on subgrade (regardless of type), miscellaneous asphalt pavement, shared use paths, crossovers, or any course with a specified thickness less than 1 inch or a specified spread rate less than 100 pounds per square yard. Density testing for acceptance will not be performed on asphalt courses placed on bridge decks or approach slabs; compact these courses in static mode only. In addition, density testing for acceptance will not be performed on the following areas when they are less than 1,000 feet continuous in length: turning lanes, acceleration lanes, deceleration lanes, shoulders, parallel parking lanes, or ramps. Density testing for acceptance will not be performed in intersections. The limits of the intersection will be from stop bar to stop bar for both the mainline and side streets. Compact these courses in accordance with a standard rolling procedure approved by the Engineer. In the event that the rolling procedure deviates from the approved procedure, placement of the mix will be stopped.

### **334-7 Method of Measurement.**

For the work specified under this Section, the quantity to be paid for will be the weight of the mixture, in tons.

The bid price for the asphalt mix will include the cost of the liquid asphalt and the tack coat application as specified in 334-5.5.4. There will be no separate payment or unit price adjustment for the asphalt binder material in the asphalt mix.

### **334-8 Basis of Payment.**

**334-8.1 General:** Price and payment will be full compensation for all the work specified under this Section.

**CONCRETE FOR LAP (OFF-SYSTEM).**  
**(REV 12-20-11) (FA 2-27-12)**

**SECTION 344**  
**CONCRETE FOR LAP (OFF-SYSTEM)**

**344-1 Description.**

**344-1 General:** Construct concrete based on the type of work as described in the Contract and the concrete work categories as defined below.

**344-1.2 Work Categories:** Construction will fall into one of the following concrete work categories:

**344-1.2.1 Concrete Work Category 1:** Includes the construction of sidewalks, curb and gutter, ditch and slope pavement, or other non-reinforced cast-in- place elements.

**344-1.2.2 Concrete Work Category 2:** Includes the construction of precast concrete including concrete barriers, traffic railing barriers, parapets, sound barriers, inlets, manholes, junction boxes, pipe culverts, storm sewers, box culverts, pre-stressed concrete poles, concrete bases for light poles, highway sign foundations, retaining wall systems, traffic separators or other structural precast elements.

**344-1.2.3 Concrete Work Category 3:** Includes the work associated with the placement and/or construction of structural cast-in-place concrete meeting the requirements of this section.

**344-2 Materials.**

**344-2.1 General:** Use concrete composed of a mixture of Portland cement, aggregates, and water, with or without chemical or mineral admixtures that meet the following requirements:

**344-2.1.1 Portland Cement:** Portland cements meeting the requirements of AASHTO M-85 or ASTM C-150 is required. Different brands of cement, cement of the same brand from different facilities or different types of cement shall be stored separately and shall not be mixed.

**344-2.1.2 Coarse and Fine Aggregates:** Aggregates shall meet ASTM C 33. Source approval by the FDOT is not required.

**344-2.1.3 Water:** Water shall meet the requirements of ASTM C 1602.

**344-2.1.4 Chemical Admixtures:** Chemical admixtures shall be listed on the FDOT Qualified Products List. Admixtures may be added at the dosage rates recommended by the manufacturer.

**344-2.1.5 Pozzolans and Slag:** Pozzolans and Slag shall meet the requirements of Table 344-1. Fly ash shall not include the residue resulting from the burning of municipal garbage or any other refuse with coal, or the burning of industrial or municipal garbage in incinerators.

Table 344-1		
Type or Class	Test Method	Exceptions
Class C Fly Ash	ASTM C 618	Not to be used with Types IP or IS cements.
Class F Fly Ash	ASTM C 618	Not to be used with Types IP or IS cements.

Petroleum Coke Class F	ASTM C 618	Not to be used with Types IP or IS cements.
Bark Ash Class F	ASTM C 618	Not to be used with Types IP or IS cements.
Silica Fume	ASTM C 1240	
Metakaolin	ASTM C 618	
Slag	ASTM C 989	Use only ground granulated blast-furnace slag grade 100 or 120.
Ultra Fine Fly Ash	ASTM C 618	Not to be used with Types IP or IS cements.

### 344-3 Production, Mixing and Delivery of Concrete.

#### 344-3.1 Concrete Production Requirements:

**344-3.1.1 Category 1:** Use a concrete production facility that is certified by the National Ready Mixed Concrete Association (NRMCA) or listed on the FDOT list of non-structural concrete producers. Concrete production facilities listed on the FDOT Producers with Accepted QC Programs list for structural concrete may also be used for Category 1.

**344-3.1.2 Category 2:** Use a pre-stressed and or precast facility listed on the FDOT Producers with Accepted QC Programs for precast or pre-stressed concrete.

**344-3.1.3 Category 3:** Use a structural concrete facility listed on the FDOT Producers with Accepted QC Programs for structural concrete.

**344-3.2 Classes of Concrete:** Meet the requirements of Table 344-2.

Table 344-2						
Class	Minimum Strength (28 day) (psi)	Target Slump (inches)	Target Range (inches)	Air Content Range (%)	Minimum Total Cementitious Materials Content (lb/yd <sup>3</sup> )	Maximum Water to Cementitious Material Ratio (lb/lb)
Category 1						
Class NS	2,500	N/A	N/A	N/A	N/A	N/A
Category 3						
I	3,000	3	± 1.5	1.0 to 6.0	470	0.53
I (Pavement)	3,000	2	± 1.5	1.0 to 6.0	470	0.50
II	3,400	3	± 1.5	1.0 to 6.0	470	0.53
II (Bridge Deck)	4,500	3	± 1.5	1.0 to 6.0	611	0.44
III	5,000	3	± 1.5	1.0 to 6.0	611	0.44
III (Seal)	3,000	8	± 1.5	1.0 to 6.0	611	0.53
IV	5,500	3	± 1.5	1.0 to 6.0	658	0.41
IV (Drilled Shaft)	4,000	8.5	± 1.5	0.0 to 6.0	658	0.41
V (Special)	6,000	3	± 1.5	1.0 to 6.0	752	0.37
V	6,500	3	± 1.5	1.0 to 6.0	752	0.37
VI	8,500	3	± 1.5	1.0 to 6.0	752	0.37

**344-3.3 Contractors Quality Control:** For Categories 1 and 2, assume full responsibility for controlling all operations and processes such that the requirements of these Specifications are met at all times.



For Category 3, furnish a Quality Control (QC) plan to identify to the Engineer how quality will be ensured at the project site. During random inspections, the Engineer will use this document to verify that the construction of the project is in agreement with the QC plan.

**344-3.4 Concrete Mix Design:** Before producing any Category 1 or Category 2, submit the proposed mix designs to the Engineer on a form provided by the Engineer. For Category 3, submit to the Engineer for approval, FDOT approved mix designs. Do not use concrete mix designs without prior approval of the Engineer.

Materials may be adjusted provided that the theoretical yield requirement of the approved mix design is met. Show all required original approved design mix data and batch adjustments on an Engineer approved concrete delivery ticket.

**344-3.5 Delivery:** For Category 3, the maximum allowable transit time of concrete is 90 minutes.

Furnish a delivery ticket on a form approved by the Engineer with each batch of concrete before unloading at the placement site. Record material quantities incorporated into the mix on the delivery ticket. Ensure that the Batchers responsible for producing the concrete signs the delivery ticket certifying that the batch was produced and delivered in accordance with these requirements. Sign the delivery ticket certifying that the concrete was placed in accordance with these requirements.

**344-3.6 Placing Concrete:**

**344-3.6.1 Concreting in Cold Weather:** Do not mix or place concrete when the air temperature at placement is below 45°F.

During the curing period, if NOAA predicts the ambient temperature to fall below 35°F for 12 hours or more or to fall below 30°F for more than 4 hours, enclose the structure in such a way that the air temperature within the enclosure can be kept above 50°F for a period of 3 days after placing the concrete or until the concrete reaches a minimum compressive strength of 1,500 psi.

Assume all risks connected with the placing and curing of concrete. Although the Engineer may give permission to place concrete, the Contractor is responsible for satisfactory results. If the placed concrete is determined to be unsatisfactory, remove, dispose of, and replace the concrete at no expense to the Agency.

**344-3.6.2 Concreting in Hot Weather:** For Category 3, hot weather concreting is defined as the production, placing and curing of concrete when the concrete temperature at placing exceeds 86°F but is less than 100°F.

Unless the specified hot weather concreting measures are in effect, reject concrete exceeding 86°F at the time of placement. Regardless of special measures taken, reject concrete exceeding 100°F. Predict the concrete temperatures at placement time and implement hot weather measures to avoid production shutdown.

**344-3.7 Mixers:** For Category 3 concrete, do not place concrete from a truck mixer that does not have a current FDOT mixer identification card.

**344-3.8 Small Quantities of Concrete:** With approval of the Engineer, small quantities of concrete, less than 3 cubic yards placed in one day and less than 0.5 cubic yards placed in a single placement may be accepted using a pre-bagged mixture. The Engineer may verify that the pre-bagged mixture is prepared in accordance with the manufacturer's recommendations and will meet the requirements of this Specification.

**344-3.9 Sampling and Testing:**

**344-3.9.1 Category 1:** The Engineer may sample and test the concrete to verify its quality. The minimum 28 day compressive strength requirement for this concrete is 2,500 psi.

**344-3.9.2: Category 2:** No sampling and testing is required for category 2.

**344-3.9.3 Category 3:** The Engineer will randomly select a sample from each 200 cubic yards or one day's production to determine plastic properties and to make three 4 x 8 inch cylinders for testing by the Engineer at 28 days to ensure that the design compressive strength has been met for the class of concrete as specified in Table 344-2.

**344-3.10 Records:** Ensure the following records are available for review for at least 3 years after final acceptance of the project:

1. Approved concrete mix designs.
2. Materials source (delivery tickets, certifications, certified mill test reports).
3. A copy of the scale company or testing agency report showing the observed deviations from quantities checked during calibration of the scales and meters.
4. A copy of the documentation certifying the admixture weighing/measuring devices.

#### **344-4 Acceptance of the Work.**

**344-4.1 Category 1 Work:** Category 1 work will be accepted based on certification by the batcher and contractor on the delivery ticket.

**344-4.2 Category 2 Work:** Certify that the precast elements were produced by a production facility on the FDOT's list of Producers with Accepted QC Programs for precast or pre-stressed concrete. In addition, the producer's logo shall be stamped on the element. The producer shall not use the Florida Department of Transportation QC stamp on elements used on this project. Provide a statement of certification from the manufacturer of the precast element that the element meets the requirements of this Specification.

**344-4.3 Category 3 Work:** Category 3 concrete will be accepted based on the Engineer's test results for plastic properties and compressive strength requirements for the class of concrete as defined in Table 344-2. In addition, a Delivery Ticket as described in 344-3.5 will be required for acceptance of the material at the project site.

**344-4.4 Small Quantities of Concrete:** Category 3 concrete meeting the definition of 344-3.8 will be accepted in accordance with 344-4.3 based on test results for plastic properties and compressive strength.

#### **344-5 Method of Measurement.**

The quantities to be paid for will be the items shown in the plans, completed and accepted.

#### **344-6 Basis of Payment.**

Prices and payments will be full compensation for all work and materials specified in this Section.

**EARTHWORK AND RELATED OPERATIONS FOR LAP (OFF-SYSTEM).**  
**(REV 1-23-12) (FA 2-27-12)**

**SECTION 120**  
**EARTHWORK AND RELATED OPERATIONS FOR LAP (OFF-SYSTEM)**

**120-1 Description.**

**120-1.1 General:** Perform earthwork and related operations based on the type of work specified in the Contract and the Earthwork Categories as defined below. Meet the applicable requirements for materials, equipment and construction as specified.

Earthwork and related operations consists of excavation for the construction of the roadway, excavation for structures and pipe, constructing backfill around structures and pipe, and constructing embankments as required for the roadway, ditches, and channel changes.

**120-1.2 Earthwork Categories:** Performance of Earthwork Operations will fall into one of the following Earthwork Categories:

**120-1.2.1 Earthwork Category 1:** Includes the earthwork and related operations associated with the construction of sidewalks and bike paths along with any drainage structures associated with these facilities.

**120-1.2.2 Earthwork Category 2:** Includes the earthwork and related operations associated with the construction of turn lanes and other non-mainline traffic lanes, widening, roadway shoulders, concrete box culverts, retaining walls, and other drainage structures on the non-mainline pavement.

**120-1.2.3 Earthwork Category 3:** Includes the earthwork and related operations associated with the construction of new mainline pavement, along with concrete box culverts, retaining walls, and other drainage structures on the mainline pavement.

**120-2 Classes of Excavation.**

**120-2.1 Excavation of Unsuitable Material:** Excavation of unsuitable material consists of the removal of muck, clay, rock or any other material that is unsuitable in its original position and that is excavated below the finished grading template. For stabilized bases and sand bituminous road mixes, the finished grading template is the top of the finished base, shoulders and slopes. For all other bases and rigid pavement, the finished grading template is the finished shoulder and slope lines and bottom of completed base or rigid pavement.

**120-2.2 Lateral Ditch Excavation:** Lateral ditch excavation consists of all excavation of inlet and outlet ditches to structures and roadway, changes in channels of streams, and ditches parallel to the roadway right-of-way. Dress lateral ditches to the grade and cross-section shown in the plans.

**120-2.3 Channel Excavation:** Channel excavation consists of the excavation and satisfactory disposal of all materials from the limits of the channel as shown in the plans.

**120-2.4 Excavation for Structures and Pipe:** Excavation for structures consists of the excavation for bridge foundations, box culverts, pipe culverts, storm sewers and all other pipe lines, retaining walls, headwalls for pipe culverts and drains, catch basins, drop inlets, manholes, and similar structures.

## **120-3 Excavation Requirements.**

**120-3.1 Excavation and Replacement of Unsuitable Materials:** Where rock, muck, clay, or other material within the limits of the roadway is unsuitable in its original position, excavate such material to the cross-sections shown in the plans or indicated by the Engineer, and backfill with suitable material. Shape backfill materials to the required cross-sections. Where the removal of plastic soils below the finished earthwork grade is required, meet a construction tolerance of plus or minus 0.2 foot in depth and plus or minus 6 inches (each side) in width.

**120-3.2 Lateral Ditch Excavation:** Excavate inlet and outlet ditches to structures and roadway, changes in channels of streams and ditches parallel to the roadway. Dress lateral ditches to the grade and cross-section shown in the plans.

**120-3.3 Channel Excavation:** Excavate and dispose of all materials from the limits of the channel as shown in the plans. Excavate for bridge foundations, box culverts, pipe culverts, storm sewers and all other pipelines, retaining walls, headwalls for pipe culverts and drains, catch basins, drop inlets, manholes, and similar structures.

### **120-3.4 Excavation for Structures and Pipe.**

**120-3.4.1 Requirements for all Excavation:** Excavate foundation pits to permit the placing of the full widths and lengths of footings shown in the plans, with full horizontal beds. Do not round or undercut corners or edges of footings. Perform all excavation to foundation materials, satisfactory to the Engineer, regardless of the elevation shown on the plans. Perform all excavation in stream beds to a depth at least 4 feet below the permanent bed of the stream, unless a firm footing can be established on solid rock before such depth is reached, and excavate to such additional depth as may be necessary to eliminate any danger of undermining. Wherever rock bottom is secured, excavate in such manner as to allow the solid rock to be exposed and prepared in horizontal beds for receiving the masonry. Remove all loose and disintegrated rock or thin strata. Have the Engineer inspect and approve all foundation excavations prior to placing masonry.

#### **120-3.4.2 Earth Excavation:**

**120-3.4.2.1 Foundation Material other than the Rock:** When masonry is to rest on an excavated surface other than rock, take special care to avoid disturbing the bottom of the excavation, and do not remove the final foundation material to grade until just before placing the masonry. In case the foundation material is soft or mucky, the Engineer may require excavation to a greater depth and to backfill to grade with approved material.

**120-3.4.2.2 Foundation Piles:** Where foundation piles are used, complete the excavation of each pit before driving the piles. After the driving is completed, remove all loose and displaced material, leaving a smooth, solid, and level bed to receive the masonry.

**120-3.4.2.3 Removal of Obstructions:** Remove boulders, logs, or any unforeseen obstacles encountered in excavating.

**120-3.4.3 Rock Excavation:** Clean all rock and other hard foundation material, remove all loose material, and cut all rock to a firm surface. Either level, step vertically and horizontally, or serrate the rock, as may be directed by the Engineer. Clean out all seams, and fill them with concrete or mortar.

**120-3.4.4 Pipe Trench Excavation:** Excavate trenches for pipe culverts and storm sewers to the elevation of the bottom of the pipe and to a width sufficient to provide adequate working room. Remove soil not meeting the classification specified as suitable backfill material in 120-8.3.2.2 to a depth of 4 inches below the bottom of the pipe elevation.

Remove rock, boulders or other hard lumpy or unyielding material to a depth of 12 inches below the bottom of the pipe elevation. Remove muck or other soft material to a depth necessary to establish a firm foundation. Where the soils permit, ensure that the trench sides are vertical up to at least the mid-point of the pipe.

For pipelines placed above the natural ground line, place and compact the embankment, prior to excavation of the trench, to an elevation at least 2 feet above the top of the pipe and to a width equal to four pipe diameters, and then excavate the trench to the required grade.

#### **120-4 Disposal of Surplus and Unsuitable Material.**

**120-4.1 Ownership of Excavated Materials:** Dispose of surplus and excavated materials as shown in the plans or, if the plans do not indicate the method of disposal, take ownership of the materials and dispose of them outside the right-of-way.

**120-4.2 Disposal of Muck on Side Slopes:** As an exception to the provisions of 120-4.1, when approved by the Engineer, muck (A-8 material) may be placed on the slopes, or stored alongside the roadway, provided there is a clear distance of at least 6 feet between the roadway grading limits and the muck, and the muck is dressed to present a neat appearance. In addition, this material may also be disposed of by placing it on the slopes where, in the opinion of the Engineer, this will result in an aesthetically pleasing appearance and will have no detrimental effect on the adjacent developments. Where the Engineer permits the disposal of muck or other unsuitable material inside the right-of-way limits, do not place such material in a manner which will impede the inflow or outfall of any channel or of side ditches. The Engineer will determine the limits adjacent to channels within which such materials may be disposed.

**120-4.3 Disposal of Paving Materials:** Unless otherwise noted, take ownership of paving materials, such as paving brick, asphalt block, concrete slab, sidewalk, curb and gutter, etc., excavated in the removal of existing pavements, and dispose of them outside the right-of-way. If the materials are to remain the property of the Agency, place them in neat piles as directed. Existing lime rock base that is removed may be incorporated in the stabilized portion of the subgrade. If the construction sequence will allow, incorporate all existing lime rock base into the project as allowed by the Contract Documents.

**120-4.4 Disposal Areas:** Where the Contract Documents require disposal of excavated materials outside the right-of-way, and the disposal area is not indicated in the Contract Documents, furnish the disposal area without additional compensation.

Provide areas for disposal of removed paving materials out of sight of the project and at least 300 feet from the nearest roadway right-of-way line of any road. If the materials are buried, disregard the 300-foot limitation.

#### **120-5 Materials for Embankment.**

**120-5.1 General Requirements for Embankment Materials:** Construct embankments using suitable materials excavated from the roadway or delivered to the jobsite from authorized borrow pits.

Construct the embankment using maximum particle sizes as follows:

In top 12 inches: 3 1/2 inches (in any dimension).

12 to 24 inches: 6 inches (in any dimension).

In the depth below 24 inches: not to exceed 12 inches (in any dimension) or the compacted thickness of the layer being placed, whichever is less.

Spread all material so that the larger particles are separated from each other to minimize voids between them during compaction. Compact around these rocks in accordance with 120-7.2.

When and where approved by the Engineer, larger rocks (not to exceed 18 inches in any dimension) may be placed outside the one to two slope and at least 4 feet or more below the bottom of the base. Compact around these rocks to a firmness equal to that of the supporting soil. Where constructing embankments adjacent to bridge end bents or abutments, do not place rock larger than 3 1/2 inches in diameter within 3 feet of the location of any end-bent piling.

**120-5.2 Use of Materials Excavated from the Roadway and Appurtenances:** Assume responsibility for determining the suitability of excavated material for use on the project in accordance with the applicable Contract Documents. Consider the sequence of work and maintenance of traffic phasing in the determination of the availability of this material.

**120-5.3 Authorization for Use of Borrow:** Use borrow only when sufficient quantities of suitable material are not available from roadway and drainage excavation, to properly construct the embankment, subgrade, and shoulders, and to complete the backfilling of structures and pipe. Do not use borrow material until so ordered by the Engineer, and then only use material from approved borrow pits.

**120-5.3.1 Haul Routes for Borrow Pits:** Provide and maintain, at no expense to the Agency, all necessary roads for hauling the borrow material. Where borrow area haul roads or trails are used by others, do not cause such roads or trails to deteriorate in condition. Arrange for the use of all non-public haul routes crossing the property of any railroad. Incur any expense for the use of such haul routes. Establish haul routes which will direct construction vehicles away from developed areas when feasible, and keep noise from hauling operations to a minimum. Advise the Engineer in writing of all proposed haul routes.

**120-5.3.2 Borrow Material for Shoulder Build-up:** When so indicated in the plans, furnish borrow material with a specific minimum bearing value, for building up of existing shoulders. Blend materials as necessary to achieve this specified minimum bearing value prior to placing the materials on the shoulders. Take samples of this borrow material at the pit or blended stockpile.

**120-5.4 Materials Used at Pipes, Culverts, etc.:** Construct embankments over and around pipes, culverts, and bridge foundations with selected materials.

## **120-6 Embankment Construction.**

**120-6.1 General:** Construct embankments in sections of not less than 300 feet in length or for the full length of the embankment.

### **120-6.2 Dry Fill Method:**

**120-6.2.1 General:** Construct embankments to meet compaction requirements in 120-7 and in accordance with the acceptance program requirements in 120-9. Restrict the compacted thickness of the last embankment lift to 6 inches maximum.

As far as practicable, distribute traffic over the work during the construction of embankments so as to cover the maximum area of the surface of each layer.

Construct embankment in the dry whenever normal dewatering equipment and methods can accomplish the needed dewatering.

**120-6.2.1.1 For A-3 and A-2-4 Materials with up to 15% fines:** Construct the embankment in successive layers with lifts up to a maximum compacted thickness of 12 inches. Ensure the percentage of fines passing the No. 200 US Standard sieve in the A-2-4 material does not exceed 15%.

**120-6.2.1.2 For A-1 Plastic materials (As designated in FDOT Design Standard Index 505) and A-2-4 Materials with greater than 15% fines:** Construct the embankment in successive layers with lifts up to a maximum compacted thickness of 6 inches.

**120-6.2.1.3 Equipment and Methods:** Provide normal dewatering equipment including, but not limited to, surface pumps, sump pumps and trenching/digging machinery. Provide normal dewatering methods including, but not limited to, constructing shallow surface drainage trenches/ditches, using sand blankets, sumps and siphons.

When normal dewatering does not adequately remove the water, the Engineer may require the embankment material to be placed in the water or in low swampy ground in accordance with 120-7.2.4.

**120-6.2.2 Placing in Unstable Areas:** Where depositing the material in water, or in low swampy ground that will not support the weight of hauling equipment, construct the embankment by dumping successive loads in a uniformly distributed layer of a thickness not greater than necessary to support the hauling equipment while placing subsequent layers. Once sufficient material has been placed so that the hauling equipment can be supported, construct the remaining portion of the embankment in layers in accordance with the applicable provisions of 120-7.2.4 and 120-7.2.6.

**120-6.2.3 Placing on Steep Slopes:** When constructing an embankment on a hillside sloping more than 20 degrees from the horizontal, before starting the fill, deeply plow or cut into steps the surface of the original ground on which the embankment is to be placed.

**120-6.2.4 Placing Outside Standard Minimum Slope:** Where material that is unsuitable for normal embankment construction is to be used in the embankment outside the standard minimum slope (approximately one to two), place such material in layers of not more than 18 inches in thickness, measured loose. The Contractor may also place material which is suitable for normal embankment, outside such standard minimum slope, in 18 inch layers. Maintain a constant thickness for suitable material placed within and outside the standard minimum slope, unless placing in a separate operation.

### **120-6.3 Hydraulic Method:**

**120-6.3.1 Method of Placing:** When the hydraulic method is used, as far as practicable, place all dredged material in its final position in the embankment by such method. Place and compact any dredged material that is re-handled, or moved and placed in its final position by any other method, as specified in 120-7.2. The Contractor may use baffles or any form of construction he may select, provided the slopes of the embankments are not steeper than indicated in the plans. Remove all timber used for temporary bulkheads or baffles from the embankment, and fill and thoroughly compact the holes thus formed. When placing fill on submerged land, construct dikes prior to beginning of dredging, and maintain the dikes throughout the dredging operation.

**120-6.3.2 Excess Material:** Do not use excess material placed outside the prescribed slopes, below the normal high-water level, to raise the fill. Remove only the portion of this material required for dressing the slopes.

**120-6.3.3 Protection of Openings in Embankment:** Leave openings in the embankments at the bridge sites. Remove any material which invades these openings or

existing channels without additional compensation to provide the same depth of channel as existed before the construction of the embankment. Do not excavate or dredge any material within 200 feet of the toe of the proposed embankment.

## **120-7 Compaction Requirements.**

**120-7.1 Moisture Content:** Compact the materials at a moisture content such that the specified density can be attained. If necessary to attain the specified density, add water to the material, or lower the moisture content by manipulating the material or allowing it to dry, as is appropriate.

### **120-7.2 Compaction of Embankments:**

**120-7.2.1 Earthwork Category 1 and 2 Density Requirements:** The Engineer will accept a minimum density of 95% of the maximum density as determined by AASHTO T-99 Method C for all earthwork items requiring densities.

**120-7.2.2 Earthwork Category 3 Density Requirements:** The Engineer will accept a minimum of 100% of the maximum density as determined by AASHTO T-99 Method C for all densities required under category 3.

Except for embankments constructed by the hydraulic method as specified in 120-6.3, and for the material placed outside the standard minimum slope as specified in 120-6.2.4, and for other areas specifically excluded herein, compact each layer of the material used in the formation of embankments to the required density stated above. Uniformly compact each layer using equipment that will achieve the required density, and as compaction operations progress, shape and manipulate each layer as necessary to ensure uniform density throughout the embankment.

**120-7.2.3 Compaction Over Unstable Foundations:** Where the embankment material is deposited in water or on low swampy ground, and in a layer thicker than 12 inches (as provided in 120-6.2.2), compact the top 6 inches (compacted thickness) of such layer to the density as specified in 120-9.5.

**120-7.2.4 Compaction Where Plastic Material Has Been Removed:** Where unsuitable material is removed and the remaining surface is of the A-4, A-5, A-6, or A-7 Soil Groups, as determined by the Engineer, compact the surface of the excavated area by rolling with a sheeps foot roller exerting a compression of at least 250 psi on the tamper feet, for the full width of the roadbed (subgrade and shoulders). Perform rolling before beginning any backfill, and continue until the roller feet do not penetrate the surface more than 1 inch. Do not perform such rolling where the remaining surface is below the normal water table and covered with water. Vary the procedure and equipment required for this operation at the discretion of the Engineer.

**120-7.2.5 Compaction of Material To Be Used In Base, Pavement, or Stabilized Areas:** Do not compact embankment material which will be incorporated into a pavement, base course, or stabilized subgrade, to be constructed as a part of the same Contract.

**120-7.2.6 Compaction of Grassed Shoulder Areas:** For the upper 6 inch layer of all shoulders which are to be grassed, since no specific density is required, compact only to the extent directed.

**120-7.2.7 Compaction of Grassed Embankment Areas:** For the outer layer of all embankments where plant growth will be established, do not compact. Leave this layer in a loose condition to a minimum depth of 6 inches for the subsequent seeding or planting operations.



**120-7.3 Compaction of Subgrade:** If the plans do not provide for stabilizing, compact the subgrade in both cuts and fills to the density specified in 120-9.5. For undisturbed soils, do not apply density requirements where constructing narrow widening strips or paved shoulders 5 feet or less in width.

Where trenches for widening strips are not of sufficient width to permit the use of standard compaction equipment, perform compaction using vibratory rollers, trench rollers, or other type compaction equipment approved by the Engineer.

Maintain the required density until the base or pavement is placed on the subgrade.

## **120-8 Backfilling Around Structures and Pipe.**

### **120-8.1 Requirements for all Structures:**

**120-8-1.1 General:** Backfill around structures and pipe in the dry whenever normal dewatering equipment and methods can accomplish the needed dewatering.

**129-8.1.2 Equipment and Methods:** Provide normal dewatering equipment including, but not limited to, surface pumps, sump pumps, well points and header pipe and trenching/digging machinery. Provide normal dewatering methods including, but not limited to, constructing shallow surface drainage trenches/ditches, using sand blankets, perforated pipe drains, sumps and siphons.

**120-8.1.3 Backfill Materials:** Backfill to the original ground surface or subgrade surface of openings made for structures, with a sufficient allowance for settlement. The Engineer may require that the material used for this backfill be obtained from a source entirely apart from the structure.

Do not allow heavy construction equipment to cross over culvert or storm sewer pipes until placing and compacting backfill material to the finished earthwork grade or to an elevation at least 4 feet above the crown of the pipe.

**120-8.1.4 Use of A-7 Material:** In the backfilling of trenches, A-7 material may be used from a point 12 inches above the top of the pipe up to the elevation shown on the FDOT Design Standards as the elevation for undercutting of A-7 material.

**120-8.1.5 Time of Placing Backfill:** Do not place backfill against any masonry or concrete abutment, wing wall, or culvert until the Engineer has given permission to do so, and in no case until the masonry or concrete has been in place seven days or until the specified 28-day compressive strength occurs.

**120-8.1.6 Placement and Compaction:** When the backfill material is deposited in water, compact per 120-8.2.5 and 120-8.3.4. Place the material in horizontal layers not exceeding 6 inches compacted thickness, in depth above water level, behind abutments, wing walls and end bents or end rest piers, and around box culverts and all structures including pipe culverts. The Engineer may approve placing material in thicker lifts of no more than 12 inches compacted thickness above the soil envelope if a test section demonstrates the required density can be achieved. Approval will be based on five passing density tests over the test section consisting of a lift of backfill from structure to structure. The Engineer will identify the test section with the compaction effort and soil classification in the Agency Logbook. In case of a change in compaction effort or soil classification, construct a new test section. The Engineer reserves the right to terminate the Contractor's use of thick lift construction and have him revert to the 6 inch compacted lifts whenever it is determined that satisfactory results are not being obtained.

## **120-8.2 Additional Requirements for Structures Other than Pipe:**

**120-8.2.1 Density:** Where the backfill material is deposited in water, obtain a 12 inch layer of comparatively dry material, thoroughly compacted by tamping, before the Engineer verifies layer and density requirements. Meet the requirements of the density Acceptance Criteria.

**120-8.2.2 Box Culverts:** For box culverts over which pavement is to be constructed, compact around the structure to an elevation not less than 12 inches above the top of the structure, using rapid-striking mechanical tampers.

**120-8.2.3 Other Limited Areas:** Compact in other limited areas using mechanical tampers or approved hand tampers, until the cover over the structure is at least 12 inches thick. When hand tampers are used, deposit the materials in layers not more than 4 inches thick using hand tampers suitable for this purpose with a face area of not more than 100 in<sup>2</sup>. Take special precautions to prevent any wedging action against the masonry, and step or terrace the slope bounding the excavation for abutments and wing walls if required by the Engineer.

**120-8.2.4 Culverts and Piers:** Backfill around culverts and piers on both sides simultaneously to approximately the same elevation.

**120-8.2.5 Compaction Under Wet Conditions:** Where wet conditions do not permit the use of mechanical tampers, compact using hand tampers. Use only A-3 material for the hand tamped portions of the backfill. When the backfill has reached an elevation and condition such as to make the use of the mechanical tampers practical, perform mechanical tamping in such manner and to such extent as to transfer the compaction force into the sections previously tamped by hand.

## **120-8.3 Additional Requirements for Pipe 15 Inches Inside Diameter or Greater:**

**120-8.3.1 General:** Trenches for pipe may have up to four zones that must be backfilled.

**Lowest Zone:** The lowest zone is backfilled for deep undercuts up to within 4 inches of the bottom of the pipe.

**Bedding Zone:** The zone above the Lowest Zone is the Bedding Zone. Usually it will be the backfill which is the 4 inches of soil below the bottom of the pipe. When rock or other hard material has been removed to place the pipe, the Bedding Zone will be the 12 inches of soil below the bottom of the pipe.

**Cover Zone:** The next zone is backfill that is placed after the pipe has been laid and will be called the Cover Zone. This zone extends to 12 inches above the top of the pipe. The Cover Zone and the Bedding Zone are considered the Soil Envelope for the pipe.

**Top Zone:** The Top Zone extends from 12 inches above the top of the pipe to the base or final grade.

### **120-8.3.2 Material:**

**120-8.3.2.1 Lowest Zone:** Backfill areas undercut below the Bedding Zone of a pipe with coarse sand, or other suitable granular material, obtained from the grading operations on the project, or a commercial material if no suitable material is available.

**120-8.3.2.2 Soil Envelope:** In both the Bedding Zone and the Cover Zone of the pipe, backfill with materials classified as A-1, A-2, or A-3. Material classified as A-4 may be used if the pipe is concrete pipe.

**120-8.3.2.3 Top Zone:** Backfill the area of the trench above the soil envelope of the pipe with materials allowed on Design Standard, Index No. 505.

### **120-8.3.3 Compaction:**

**120-8.3.3.1 Lowest Zone:** Compact the soil in the Lowest Zone to approximately match the density of the soil in which the trench was cut.

**120-8.3.3.2 Bedding Zone:** If the trench was not undercut below the bottom of the pipe, loosen the soil in the bottom of the trench immediately below the approximate middle third of the outside diameter of the pipe.

If the trench was undercut, place the bedding material and leave it in a loose condition below the middle third of the outside diameter of the pipe. Compact the outer portions to meet the density requirements of the Acceptance Criteria. Place the material in lifts no greater than 6 inches (compacted thickness).

**120-8.3.3.3 Cover Zone:** Place the material in 6 inches layers (compacted thickness), evenly deposited on both sides of the pipe, and compact with mechanical tampers suitable for this purpose. Hand tamp material below the pipe haunch that cannot be reached by mechanical tampers. Meet the requirements of the density Acceptance Criteria.

**120-8.3.3.4 Top Zone:** Place the material in layers not to exceed 12 inches in compacted thickness. Meet the requirements of the density Acceptance Criteria.

**120-8.3.4 Backfill Under Wet Conditions:** Where wet conditions are such that dewatering by normal pumping methods would not be effective, the procedure outlined below may be used when specifically authorized by the Engineer in writing. Granular material may be used below the elevation at which mechanical tampers would be effective, but only material classified as A-3. Place and compact the material using timbers or hand tampers until the backfill reaches an elevation such that its moisture content will permit the use of mechanical tampers. When the backfill has reached such elevation, use normally acceptable backfill material. Compact the material using mechanical tampers in such manner and to such extent as to transfer the compacting force into the material previously tamped by hand.

## **120-9 Acceptance Program.**

**120-9.1 Density over 105%:** When a computed dry density results in a value greater than 105% of the applicable Proctor maximum dry density, the Engineer will perform a second density test within 5 feet. If the second density results in a value greater than 105%, investigate the compaction methods, examine the applicable Maximum Density and material description. If necessary, the Engineer will test an additional sample for acceptance in accordance with AASHTO T 99, Method C.

**120-9.2 Maximum Density Determination:** The Engineer will determine the maximum density and optimum moisture content by sampling and testing the material in accordance with the specified test method listed in 120-9.3.

**120-9.3 Density Testing Requirements:** Compliance with the requirements of 120-9.5 will be determined in accordance FM 1-T 238. The in-place moisture content will be determined for each density in accordance with FM 5-507 (Determination of Moisture Content by Means of a Calcium Carbide Gas Pressure Moisture Tester), or ASTM D 4643 (Laboratory Determination of Moisture Content of Granular Soils By Use of a Microwave Oven).

**120-9.4 Soil Classification:** The Engineer will perform soil classification tests in accordance with AASHTO T-88, and classify soils in accordance with AASHTO M-145 (Standard Specification for Classification of Soils and Soil-Aggregate Mixtures for Highway Construction Purposes) in order to determine compliance with embankment utilization requirements.

**120-9.5 Acceptance Criteria:** The Engineer will accept a minimum density in accordance with 120-7.2 with the following exceptions:

- 1) embankment constructed by the hydraulic method as specified in 120-6.3;
- 2) material placed outside the standard minimum slope as specified in 120-6.2.4;
- 3) other areas specifically excluded herein.

**120-9.6 Frequency:** The Engineer will conduct sampling and testing at a minimum frequency listed in the table below.

Test Name	Frequency
Maximum Density	One per soil type
Density	1 per 500' RDWY (Alt Lift)
Soil Classification	One per Maximum Density

**120-10 Maintenance and Protection of Work.**

While construction is in progress, maintain adequate drainage for the roadbed at all times. Maintain a shoulder at least 3 feet wide adjacent to all pavement or base construction in order to provide support for the edges.

Maintain and protect all earthwork construction throughout the life of the Contract, and take all reasonable precautions to prevent loss of material from the roadway due to the action of wind or water. Repair any slides, washouts, settlement, subsidence, or other mishap which may occur prior to final acceptance of the work. Maintain all channels excavated as a part of the Contract work against natural shoaling or other encroachments to the lines, grades, and cross-sections shown in the plans, until final acceptance of the project.

**120-11 Construction.**

**120-11.1 Construction Tolerances:** Shape the surface of the earthwork to conform to the lines, grades, and cross-sections shown in the plans. In final shaping of the surface of earthwork, maintain a tolerance of 0.3 foot above or below the plan cross-section with the following exceptions:

1. Shape the surface of shoulders to within 0.1 foot of the plan cross-section.
2. Shape the earthwork to match adjacent pavement, curb, sidewalk, structures, etc.
3. Shape the bottom of ditches so that the ditch impounds no water.
4. When the work does not include construction of base or pavement, shape the entire roadbed (shoulder point to shoulder point) to within 0.1 foot above or below the plan cross-section.

Ensure that the shoulder lines do not vary horizontally more than 0.3 foot from the true lines shown in the plans.

Ensure that the shoulder lines do not vary horizontally more than 0.3 foot from the true lines shown in the plans.

**120-11.2 Operations Adjacent to Pavement:** Carefully dress areas adjacent to pavement areas to avoid damage to such pavement. Complete grassing of shoulder areas

prior to placing the final wearing course. Do not manipulate any embankment material on a pavement surface.

When shoulder dressing is underway adjacent to a pavement lane being used to maintain traffic, exercise extreme care to avoid interference with the safe movement of traffic.

### **120-12 Method of Measurement.**

**120-12.1 Excavation:** Excavation will be paid for by volume, in cubic yards, calculated by the method of average end areas, unless the Engineer determines that another method of calculation will provide a more accurate result. The material will be measured in its original position by field survey or by photogrammetric means as designated by the Engineer. Measurement for payment will include the excavation of unsuitable material, lateral ditch excavation, channel excavation, and excavation for structures and pipe. Payment will not be made for excavation or embankment beyond the limits shown in the plans or authorized by the Engineer.

**120-12.2 Embankment:** Measurement will be made on a loose volume basis, as measured in trucks or other hauling equipment at the point of dumping on the road. Payment will not be made for embankment beyond the limits shown in the plans or authorized by the Engineer.

### **120-13 Basis of Payment.**

**120-13.1 General:** Prices and payments for the work items included in this Section will be full compensation for all work described herein, including excavating, dredging, hauling, placing, and compacting; dressing the surface of the earthwork; and maintaining and protecting the complete earthwork.

**120-13.2 Excavation:** The total quantity of all excavation specified under this Section will be paid for at the Contract unit price for Excavation. No payment will be made for the excavation of any materials which are used for purposes other than those shown in the plans or designated by the Engineer. No payment will be made for materials excavated outside the lines and grades given by the Engineer, unless specifically authorized by the Engineer.

**120-13.3 Embankment:** The total quantity of embankment specified in this Section will be paid for at the Contract unit price for embankment. No payment will be made for materials which are used for purposes other than those shown in the plans or designated by the Engineer. No payment will be made for materials placed outside the lines and grades given by the Engineer.

**LANDSCAPE INSTALLATION FOR LAP (OFF-SYSTEM).**  
**(REV 4-5-11) (FA 4-15-11)**

**SECTION 580**  
**LANDSCAPE INSTALLATION FOR LAP (OFF-SYSTEM)**

**580-1 Description.**

Plant trees and shrubs of the species, size, and quality indicated in the plans. The Engineer reserves the right to adjust the number and location of any of the designated types and species to be used at any of the locations shown, in order to provide for any unanticipated effects which might become apparent after the substantial completion of other phases of the project, or for other causes.

**580-2 Materials.**

**580-2.1 Plants:**

**580-2.1.1 Authority for Nomenclature; Species, etc.:** For the designated authority in the identification of all plant material, refer to two publications of L.H. Bailey: "Hortus III" and "Manual of Cultivated Plants," and ensure that all specimens are true to type, name, etc., as described therein. For the standard nomenclature, refer to the publication of the American Joint Committee on Horticultural Nomenclature, "Standardized Plant Names."

**580-2.1.2 Grade Standards and Conformity with Type and Species:** Only use nursery grown plant material except where specified as Collected Material. Use nursery grown plant material that complies with all required inspection, grading standards, and plant regulations in accordance with the latest edition of the Florida Department of Agriculture's "Grades and Standards for Nursery Plants".

Except where a lesser grade might be specifically specified in the plans, ensure that the minimum grade for all trees and shrubs is Florida No. 1. Ensure that all plants are the proper size and grade at the time of delivery to the site, throughout the project construction period and during any designated plant establishment period.

Ensure that plant materials are true to type and species and that any plant materials not specifically covered in Florida Department of Agriculture's "Grades and Standards for Nursery Plants" conform in type and species with the standards and designations in general acceptance by Florida nurseries.

Ensure that plant materials are shipped with tags stating the botanical and common name of the plant.

**580-2.1.3 Inspection and Transporting:** Move nursery stock in accordance with all Federal and State regulations therefor, and accompany each shipment with the required inspection certificates for filing with the Engineer.

**580-2.2 Water:** Water used in landscaping operations may be obtained from any approved source. Ensure that water is free of any substance which might be detrimental to plant growth. The use of effluent water is subject to approval and must meet all Federal, State and Local requirements.

**580-3 Specific Requirements for the Various Plant Designations.**

**580-3.1 Balled-and-Burlapped Plants (B&B), and Wired Balled-and-Burlapped (WB & B):**

**580-3.1.1 General:** Properly protect the root ball of these plants until planting them. The Engineer may reject any plant which shows evidence of having been mishandled. Set the B&B and WB&B plants then remove the top 2/3 of all wire, rope, and binding surrounding the plant. Remove the burlap from the top 4 inches of the root ball. Do not disturb the root ball in any way. Bare root material is not allowed for substitution. At least 90 days before digging out B & B and WB & B plants, root-prune those 1 1/2 inches or greater in diameter and certify such fact on accompanying invoices.

**580-3.1.2 Provisions for Wiring:** For plants grown in soil of a loose texture, which does not readily adhere to the root system (and especially in the case of large plants or trees), the Engineer may require WB & B plants. For WB & B plants, before removing the plant from the excavated hole, place sound hog wire around the burlapped ball, and loop and tension it until the tightened wire netting substantially packages the burlapped ball such as to prevent disturbing of the loose soil around the roots during handling.

**580-3.2 Container-Grown Plants (CG):** The Engineer will not accept any CG plants with roots which have become pot-bound or for which the top system is too large for the size of the container. Fully cut and open all containers in a manner that will not damage the root system. Do not remove CG plants from the container until immediately before planting to prevent damage to the root system.

**580-3.3 Collected Plants (Trees and Shrubs) (C):** Use C plants which have a root ball according to "Florida Grades and Standards for Nursery Plants". Do not plant any C plant before the Engineer's inspection and acceptance at the planting site.

**580-3.4 Collected Plants (Herbaceous) (HC):** The root mass and vegetative portions of collected herbaceous plants shall be as large as the specified container-grown equivalent. Do not plant any collected plant before inspection and acceptance by the Engineer.

**580-3.5 Specimen Plants (Special Grade):** When Specimen (or Special Grade) plants are required, label them as such on the plant list, and tag the plant to be furnished.

**580-3.6 Palms:** Wrap the roots of all plants of the palm species before transporting, except if they are CG plants and ensure that they have an adequate root ball structure and mass for healthy transplantation as defined in "Florida Grades and Standards for Nursery Plants".

The Engineer will not require burlapping if the palm is carefully dug from marl or heavy soil that adheres to the roots and retains its shape without crumbling. During transporting and after arrival, carefully protect root balls of palms from wind and exposure to the sun. Muck grown palms are not allowed. After delivery to the job site, if not planting the palm within 24 hours, cover the root ball with a moist material. Plant all palms within 48 hours of delivery to the site.

Move sabal and coconut palms in accordance with the "Florida Grades and Standards for Nursery Plants."

**580-3.7 Substitution of Container-Grown (CG) Plants:** With the Engineer's approval, the Contractor may substitute CG plants for any other root classification types, if he has met all other requirements of the Contract Documents.

## **580-4 Planting Requirements.**

**580-4.1 Layout:** Prior to any excavation or planting, mark all planting beds and individual locations of palms, trees, large shrubs and proposed art and architectural

structures, as shown in the plans, on the ground with a common bright orange colored spray paint, or with other approved methods, within the project limits. Obtain the Engineer's approval and make necessary utility clearance requests.

**580-4.2 Excavation of Plant Holes:** Excavate plant holes after an area around the plant three times the size of the root ball has been tilled to a depth of the root ball. Ensure that the plant hole is made in the center of the tilled area only to the depth of the plant root ball.

Where excess material has been excavated from the plant hole, use the excavated material to backfill to proper level.

**580-4.3 Setting of Plants:** Center plants in the hole. Lower the plant into the hole so that it rests on a prepared hole bottom such that the roots are level with, or slightly above, the level of their previous growth and so oriented such as to present the best appearance. Backfill with native soil, unless otherwise specified on the plans. Firmly rod and water-in the backfill so that no air pockets remain. Apply a sufficient quantity of water immediately upon planting to thoroughly moisten all of the backfilled earth. Keep plants in a moistened condition for the duration of the planting period.

When so directed, form a water ring 6 inches in width to make a water collecting basin with an inside diameter equal to the diameter of the excavated hole. Maintain the water ring in an acceptable condition.

**580-4.4 Special Bed Preparation:** Where multiple or mass plantings are to be made in extended bedding areas, and the plans specify Special Bed Preparation, prepare the planting beds as follows:

Remove all vegetation from within the area of the planting bed and excavate the surface soil to a depth of 6 inches. Backfill the excavated area with peat, sand, finish soil layer material or other material to the elevation of the original surface. Till the entire area to provide a loose, friable mixture to a depth of at least 8 inches. Level the bed only slightly above the adjacent ground level. Then mulch the entire bedding area, in accordance with 580-8.

## **580-5 Staking and Guying.**

**580-5.1 General:** When specified in the plans, or as directed by the Engineer, stake plants in accordance with the following.

Use wide plastic, rubber or other flexible strapping materials to support the tree to stakes or ground anchors that will give as the tree moves in any direction up to 30 degrees. Do not use rope or wire through a hose. Use guy chords, hose or any other thin bracing or anchorage material which has a minimum 12 inches length of high visibility flagging tape secured to guys, midway between the tree and stakes for safety.

Stake trees larger than 1 inch diameter and smaller than 2 inches diameter with a 2 by 2 inch stake, set at least 2 feet in the ground and extending to the crown of the plant. Firmly fasten the plant to the stake with flexible strapping materials as noted above.

**580-5.2 Trees of 2 to 3 1/2 inches [50 to 90 mm] Caliper:** Stake all trees, other than palm trees, larger than 2 inches caliper and smaller than 3 1/2 inches caliper with two 2 by 4 inch stakes, 8 feet long, set 2 feet in the ground. Place the tree midway between the stakes and hold it firmly in place by flexible strapping materials as noted above.

**580-5.3 Large Trees:** Guy all trees, other than palm trees, larger than 3 1/2 inches caliper, from at least three points, with flexible strapping materials as noted above.



Anchor flexible strapping to 2 by 4 by 24 inch stakes, driven into the ground such that the top of the stake is at least 3 inches below the finished ground.

**580-5.4 Special Requirements for Palm Trees:** Brace palms which are to be staked with three 2 by 4 inch wood braces, toe-nailed to cleats which are securely banded at two points to the palm, at a point one third the height of the trunk. Pad the trunk with five layers of burlap under the cleats. Place braces approximately 120 degrees apart and secure them underground by 2 by 4 by 12 inch stake pads.

#### **580-6 Tree Protection and Root Barriers.**

Install tree barricades when called for in the Contract Documents or by the Engineer to protect existing trees from damage during project construction. Place barricades at the drip line of the tree foliage or as far from the base of the tree trunk as possible. Barricades shall be able to withstand bumps by heavy equipment and trucks. Maintain barricades in good condition.

When called for in the Contract Documents, install root barriers or fabrics in accordance with the details shown.

#### **580-7 Pruning.**

Prune all broken or damaged roots and limbs in accordance with established arboriculture practices. When pruning is completed ensure that all remaining wood is alive. Do not reduce the size or quality of the plant below the minimum specified.

#### **580-8 Mulching.**

Uniformly apply mulch material, consisting of wood chips (no Cypress Mulch is allowed), pine straw, compost, or other suitable material approved by the Engineer, to a minimum loose thickness of 3 inches over the entire area of the backfilled hole or bed within two days after the planting. Maintain the mulch continuously in place until the time of final inspection.

#### **580-9 Disposal of Surplus Materials and Debris.**

Dispose of surplus excavated material from plant holes by scattering or otherwise as might be directed so that it is not readily visible or conspicuous to the passing motorist or pedestrian. Remove all debris and other objectionable material from the site and clean up the entire area and leave it in neat condition.

#### **580-10 Contractor's Responsibility for Condition of the Plantings.**

Ensure that the plants are kept watered, that the staking and guying is kept adjusted as necessary, that all planting areas and beds are kept free of weeds and undesirable plant growth and that the plants are maintained so that they are healthy, vigorous, and undamaged at the time of acceptance.

#### **580-11 Plant Establishment Period.**

If the Contract Documents designate a Plant Establishment Period, assume responsibility for the proper maintenance, survival and condition of all landscape items during such period at no additional cost.

**580-12 Method of Measurement.**

The quantities to be paid for will be the items shown in the plans, completed and accepted.

**580-13 Basis of Payment.**

Prices and payments will be full compensation for all work specified in this Section.

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, 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.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**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, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) 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 provisions of the Americans with 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 contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program 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 EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency 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 the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.



d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 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 U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**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 FHWA or the contracting agency 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.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 any Federal 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.

b. 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 Federal 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.

2. 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. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## APPENDICES A and E

Revised 01/20/2015

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the Florida Department of Transportation

to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES ON FEDERAL-AID  
CONTRACTS (Compliance with 49CFR, Section 20.100 (b))**  
375-030-33 PROCUREMENT 10/01

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

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 any federal 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 federal 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 of Lobbying Activities", in accordance with its instructions. (Standard Form-LLL can be obtained from the Florida Department of Transportation's Professional Services Administrator or Procurement Office.)

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Name of Consultant: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DISCLOSURE OF LOBBYING ACTIVITIES**

375-030-34  
 PROCUREMENT  
 02/16

Is this form applicable to your firm?  
 YES  NO   
 If *no*, then please complete section 4  
 below for "Prime"

<b>1. Type of Federal Action:</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing b. material change <b>For Material Change Only:</b> Year: _____ Quarter: _____ Date of last report: _____ (mm/dd/yyyy)
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : _____ _____ _____ Congressional District, <i>if known</i> : 4c _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b> _____ _____ _____ Congressional District, <i>if known</i> : _____	
<b>6. Federal Department/Agency:</b> _____ _____	<b>7. Federal Program Name/Description:</b> _____ _____ CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i> _____ _____ _____	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> _____ _____ _____	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date (mm/dd/yyyy): _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the fullname, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS FOR FEDERAL AID CONTRACTS**

(Compliance with 2 CFR Parts 180 and 1200)

375-030-32 PROCUREMENT 11/15

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant/Contractor: \_\_\_\_\_

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

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

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

Instructions for Certification

Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**NON-COLLUSION DECLARATION AND  
COMPLIANCE WITH 49 CFR § 29**

575-060-13  
RIGHT OF WAY  
05/01  
Page 1 of 3

ITEM/SEGMENT NO.: \_\_\_\_\_  
F.A.P. NO.: \_\_\_\_\_  
MANAGING DISTRICT: \_\_\_\_\_  
PARCEL NO.: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_  
BID LETTING OF: \_\_\_\_\_

I, \_\_\_\_\_, hereby declare that I am  
(NAME)  
\_\_\_\_\_ of \_\_\_\_\_  
(TITLE) (FIRM)  
of \_\_\_\_\_  
(CITY AND STATE)

and that I am the person responsible within my firm for the final decision as to the price(s) and amount of this Bid on this State Project.

I further declare that:

1. The prices(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be so disclosed prior to the bid opening.
3. No attempt has been made or will be made to solicit, cause or induce any other firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this Declaration.
8. As required by Section 337.165, Florida Statutes, the firm has fully informed the Department of Transportation in writing of all convictions of the firm, its affiliates (as defined in Section 337.165(1)(a), Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract or for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees of the firm or affiliates who were convicted of contract crimes while in the employ of another company.

9. I certify that, except as noted below, neither my firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of Federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR §29.110(a), by any Federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against him or her for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State or local government transaction or public contract; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a Federal, State or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and

(d) has within a three-year period preceding this certification had one or more Federal, State or local government public transactions terminated for cause or default.

10. I(We), certify that I(We), shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract by any Federal Agency unless authorized by the Department.

Where I am unable to declare or certify as to any of the statements contained in the above stated paragraphs numbered (1) through (10), I have provided an explanation in the "Exceptions" portion below or by attached separate sheet.

EXCEPTIONS:

(Any exception listed above will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate to whom it applies, initiating agency and dates of agency action. Providing false information may result in criminal prosecution and/or administrative sanctions.)

I declare under penalty of perjury that the foregoing is true and correct.

CONTRACTOR: \_\_\_\_\_ (Seal)

BY: \_\_\_\_\_  
NAME AND TITLE PRINTED

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_  
SIGNATURE

WITNESS: \_\_\_\_\_

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**FAILURE TO FULLY COMPLETE AND EXECUTE THIS DOCUMENT  
MAY RESULT IN THE BID BEING DECLARED NONRESPONSIVE**

## REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors and other lower tier participants.

- Appendix B of 49 CFR Part 29 –

### Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

#### *Instructions for Certification*

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.