Sponsored by: Williams

CITY OF MARATHON, FLORIDA
RESOLUTION 2026-81

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA ACCEPTING THE LOWEST RESPONSIVE AND RESPONSIBLE BID, AND APPROVING A CONTRACT BETWEEN THE CITY AND GENERAL ASPHALT CO., LLC., IN AN AMOUNT NOT TO EXCEED $1,561,817.29 FOR THE REPLACEMENT OF THE 117TH STREET BRIDGE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") has been working with FDOT to secure funding for the replacement of the 117th Street bridge and subsequently received funding for the design and replacement of the bridge. The City obtained the services of design professional, and said bridge was designed and went through a rigorous review process with FDOT for plan approval and have received concurrence from FDOT to bid the project.; and

WHEREAS, on August 19th, 2026, 3 bids were received with the lowest bid submitted by General Asphalt Co., LLC, (the "Contractor") and City staff subsequently reviewed and determined that the bid submitted by General Asphalt Co., LLC was responsive and responsible; and

WHEREAS, the City finds that accepting the low bid and entering into a contract with the Contractor is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Contract between the City and the Contractor for the construction of the Project in an amount not to exceed $1,561,817.29, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF SEPTEMBER 2026.

THE CITY OF MARATHON, FLORIDA

Lynny Del Gaizo, Mayor

AYES: Still, Landry, Matlock, Struyf, Del Gaizo
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

Steve Williams, City Attorney

SECTION 00500
CONSTRUCTION CONTRACT

This Contract (the "Contract") is dated as of the 8th day of September 2026 by and between the City of Marathon (hereinafter called the "CITY") **General Asphalt CO., LLC**(hereinaftercalled "CONTRACTOR") located at: **4850 NW 72ND AVE Miami, FL 33166**

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the plans, Contract Documents and detailed in Scope of work for the 117th Street Bridge at Vaca Channel #2 Bridge #904517 project, FM # 448208-1-58-01. The work generally encompasses all labor, material, work, and equipment necessary for the full bridge replacement as depicted on the construction plans.

ARTICLE 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1 It is understood that the CITY will designate a representative for the Work. The CITY'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Carlos A. Solis, P.E. Director of Public Works and Engineering, 9805 Overseas Highway, Marathon Florida 33050.

2.2 The CITY'S ENGINEER OF RECORD referred to in any of the Contract Documents designated herein is Christopher Gamache, P.E. with Stantec Conulting Services, Inc.

2.3 The CEI consultant for the project is RS&H, Inc., Jerry Clark Project Administrator, and will be the point of contact for the project.

ARTICLE 3. TERM

3.1 Contract Term. The Work shall be substantially completed within Two Hundred Ten **Days (210)** calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fully completed and ready for final payment in accordance with the Contract Documents within **Two Hundred Forty Days (240)** calendar days after the date specified in the Notice to Proceed ("Final Completion").

3.2 Contract Time. The Contract Term shall not commence until the CITY issues to CONTRACTOR a Notice to Proceed and the term of the Contract shall be through the date of final payment unless terminated earlier pursuant to Section 00700 – General Conditions, Article 14, Payments to Contractor and Completion.

3.3 Survival of Obligations. Any obligations by the CONTRACTOR, including but not limited to those set forth in Section 00700 – General Conditions, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also

recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, Liquidated Damages shall be imposed in accordance with Section 00701 subsection 8-10.

3.5 Should the Substantial Completion and/or Full/Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the CITY including, but not limited to, completion contractor expenses, lost/unrealized revenue, grant funding, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

3.6 Monies due to the CITY under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

ARTICLE 4. CONTRACT PRICE

4.1 CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to this Article.

4.1.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated on the Unit Price Bid Form attached hereto as **Exhibit "A."** Estimated quantities, as listed in the bid form, are provided to assist the contractor, and determination of actual quantities and classification are to be verified by CONTRACTOR prior to submittal of the bid as provided in the Contract Documents.

4.2 The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

ARTICLE 5. PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with the Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by CITY as provided in the General Conditions.

5.2 Progress Payments, Retainage. CITY shall make progress payments, deducting the amount from the Contract Price above, on the basis of CONTRACTOR'S Applications for Payment as recommended by the CEI Consultant, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in Exhibit A or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1 No work shall commence until CONTRACTOR delivers to the CITY **certified copies of the performance bond and payment bond establishing that the bonds have been recorded with the county**

clerk, complete original partial releases of all liens, bond claims, and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien, bond claim, or claim could be filed for work completed to date.

5.2.2 No progress payment shall be made until CONTRACTOR delivers to CITY complete original partial releases and waivers of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the CITY.

5.3 The CONTRACTOR agrees that five percent (5%) of the amount due for Work as set forth in each Application for Payment shall be retained by CITY for each Progress Payment until Final Payment, as defined in Section 0700 - General Conditions, Article 14, Payments to Contractor and Completion.

5.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as CITY'S REPRESENTATIVE shall determine, or CITY may withhold, in accordance with the General Conditions.

5.4 The payment of any Application for Payment by CITY, including the Final Request, does not constitute approval or acceptance by CITY of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of CITY's rights hereunder or at law or in equity.

5.5 The Final Application for Payment by CONTRACTOR shall not be made until the CONTRACTOR delivers to the City complete original final releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

ARTICLE 6. INSURANCE/INDEMNIFICATION.

6.1 Insurance. The CONTRACTOR shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

6.2 Indemnification. "To the extent provided by law, Contractor shall indemnify, defend, and hold harmless the City and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor.

The foregoing indemnification shall not constitute a waiver of the Department's or City's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify City for the negligent acts or omissions of City, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by Contractor to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement."

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work. Contractor shall abide with all conditions in attached **EXHIBIT B**.

7.4 CONTRACTOR has made, or caused to be made, examinations, investigations, tests, or studies as necessary to determine surface and subsurface conditions at or on the site. CONTRACTOR acknowledges that CITY does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to subsurface conditions or underground facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 The CONTRACTOR is aware of the general nature of Work to be performed by CITY and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 The CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 The CONTRACTOR has given the CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8 The CONTRACTOR warrants the following:

7.8.1 Equal Employment: During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.

4. In the event of the CONTRACTOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in

Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7.8.2 Anti-Discrimination: The CONTRACTOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

7.8.3 Anti-Kickback: The CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY or any other applicable federal or state agency, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to declare contractor in default, and/or annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.4 Licensing and Permits: The CONTRACTOR warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

7.8.5 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been place on the convicted vendor list following a conviction for public entity crime, as specified in Document 00200, Section 7.5, of the Instructions to Bidders.

7.8.6 Conformance With FHWA Requirements: The contractor shall adhere to all Contract Provisions of Federal-Aid Construction Contract, FHWA 1273 as depicted in **EXHIBIT B.**

ARTICLE 8. CONTRACT DOCUMENTS.

8.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Contract as though physically attached as a part thereof:

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

8.1.4 Exhibits to this Contract.

8.1.5 Supplementary Conditions.

8.1.6 General Conditions.

8.1.7 Any federal, state, county or city permits for the Project

8.1.8 Specifications bearing the title: Contract Documents for **The Replacement of the 117th StreetBridge**. 8.1.9 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: **CITY OF MARATHON CONSTRUCTION PLANS FINANCIAL PROJECT ID 44808-1-58-01 MONROE COUNTY (90000561) 117TH STREET AT VACA CHANNEL NO. 2 #904517 BRIDGE REPLACEMENT**

8.1.10 Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed, and all other provisions and sections of the Bid Documents.

8.1.11 Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.

8.1.12 The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).

8.1.13 There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

8.1.14 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

8.1.15 The General Conditions discuss the bond and surety requirements of the CITY. This Contract requires the CONTRACTOR to provide payment and performance bonds, unless stated otherwise in Section 255.05, Florida Statutes.. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

ARTICLE 9. MISCELLANEOUS.

9.1 Terms used in this Contract which are defined in Article 1 of the General Conditions, Section 700, will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders, Section 200, also apply to this Contract.

9.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from

any duty or responsibility under the Contract Documents.

9.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

9.5 Remedies. If and when any default of this Contract occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, liquidated damages specified in Article 3.4, actual damages, and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Contract shall limit the CITY from pursuing any legal or equitable remedies that may apply. A default by CONTRACTOR under any contract with the CITY will be a default under all contracts with the CITY. The CITY may apply the proceeds from any contract between CONTRACTOR and the CITY to satisfy amounts owed by the CONTRACTOR to the CITY under any other contract.

9.6 Access to Public Records. The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

9.6.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

9.6.2 The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public

records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

9.6.3 Public Records" is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

9.6.4 Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.

9.6.5 The CONTRACTOR consents to the City's enforcement of the CONTRACTOR's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney's fees incurred by the City.

9.6.6 The CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

9.6.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

9.7 Inspection and Audit. During the term of this Contract and for five (5) years from the date of final Invoice, the CONTRACTOR shall allow CITY representatives access during reasonable business hours to CONTRACTOR'S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CONTRACTOR was paid for services not performed, upon receipt of written demand by the CITY, the CONTRACTOR shall remit such payments to the CITY.

9.8 Counterparts. This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

9.9 Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

General Asphalt Co, LLC

4850 NW 72 AVE
MIAMI FL 33166

FOR CITY:

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: City Manager-
Steve Williams

WITH COPY TO:

City Attorney -
9805 Overseas Highway
Marathon, Florida
33050 Phone:
305-289-4103 Fax:
305-289-4123

9.10 WAIVER OF JURY TRIAL AND VENUE. The CITY and CONTRACTOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

9.11 Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

9.12 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form as provided by the City.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 9th day of September, 20 26, and by General Asphalt Co, LLC (Contractor), signing by and through its CEO, duly authorized to execute same.

CONTRACTOR

WITNESS

By: _____

By: Rob Lopez, CEO
Name & Title

By: _____

By _____
(Signature and Title)
(Corporate Seal)

GENERAL ASPHALT CO LIMITED LIABILITY COMPANY SEAL 2021 FLORIDA

Jose Semprun / Director of Operations
(Type Name/Title signed above)

17 day of September, 2026.

CITY

ATTEST

Diane Clavier
City Clerk

CITY OF MARATHON, FLORIDA

_____,
City Manager

30 day of September, 2026

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE CITY OF MARATHON ONLY:

By: _____
City Attorney

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, ROB LOPEZ, certify that I am the CEO of GENERAL ASPHALT CO, LLC., who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled Replacement of the 117th ST Bridge 2026-006, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

Signed and sealed this 17 day of September, 2026

(SEAL)

Signature

CEO, ROB LOPEZ

Typed w/Title

GENERAL ASPHALT CO. LLC LIMITED LIABILITY COMPANY SEAL 2021 FLORIDA

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 17 day of September, 2026.

My Commission Expires:

Notary Public State of Florida
Desiree C Garcia
My Commission HH 329584
Expires 11/6/2026

Notary Public

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ROBERT LOPEZ, certify that I am the Executive Chairman of General Asphalt Co, LLC and that ROB LOPEZ, who signed the Bid with the City of Marathon, Monroe County, Florida for Replacement 11th St Bridge., is CEO of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 17 day of September, 2026

(SEAL) _____
Signature

ROBERT LOPEZ
Typed w/Title

GENERAL ASPHALT CO, LLC LIMITED LIABILITY COMPANY SEAL 2021 FLORIDA

STATE OF FLORIDA
COUNTY OF MIAMI-DADE.

SWORN TO AND SUBSCRIBED before me this 17 day of September, 2026

My Commission Expires:

_____
Notary Public

Notary Public State of Florida
Desiree C Garcia
My Commission HH 329584
Expires 11/6/2026

EXHIBIT A

For the Replacement of the 117th St Bridge improvements

Roadway Items

Pay Item	Description	Unit	Qty	Unit Cost	Total Cost
101-1	MOBILIZATION	LS	1	$ 120,000.00	$ 120,000.00
102-1	MAINTENANCE OF TRAFFIC	LS	1	$ 120,000.00	$ 120,000.00
102-4	PEDESTRIAN OR BICYCLE SPECIAL DETOUR	LS	1	$ 2,600.00	$ 2,600.00
104-10-3	SEDIMENT BARRIER	LF	69	$ 13.00	$ 897.00
104-18	INLET PROTECTION SYSTEM	EA	2	$ 215.00	$ 430.00
110-1-1	CLEARING & GRUBBING	LS	1	$ 26,000.00	$ 26,000.00
110-21	TREE PROTECTION BARRIER	LF	20	$ 26.00	$ 520.00
110-22	TREE ROOT AND BRANCH PRUNING	EA	1	$ 3,900.00	$ 3,900.00
120-1	REGULAR EXCAVATION	CY	8.7	$ 260.00	$ 2,262.00
120-6	EMBANKMENT	CY	2.9	$ 390.00	$ 1,131.00
160-4	TYPE B STABILIZATION	SY	49	$ 20.00	$ 980.00
285-701	OPTIONAL BASE, BASE GROUP 01	SY	24	$ 130.00	$ 3,120.00
285-706	OPTIONAL BASE, BASE GROUP 06	SY	14	$156.00	$ 2,184.00
327-70-6	MILLING EXISTING ASPHALT PAVEMENT, 1 1/2" AVG DEPTH	SY	76	$ 83.00	$6,308.00
334-1-12	SUPERPAVE ASPHALTIC CONC, TRAFFIC B	TN	4.1	$ 1,560.00	$6,396.00
337-7-80	ASPHALT CONCRETE FRICTION COURSE,TRAFFIC B, FC-9.5, PG 76-22	TN	9.4	$ 1,256.00	$ 11,891.00
339-1	MISCELLANEOUS ASPHALT PAVEMENT	TN	1.1	$ 2,025.00	$ 2,227.50
536-1-0	GUARDRAIL -ROADWAY, GENERAL/LOW SPEED TL-2	LF	38	$ 325.00	$ 12,350.00
536-73	GUARDRAIL REMOVAL	LF	32	$ 13.00	$ 416.00
536-8-111	GUARDRAIL TRANSITION CONNECTION TO RIGID BARRIER, F&I- INDEX 536-001, APPROACH TL-2	EA	2	$ 1.30	$2.60
536-8-113	GUARDRAIL TRANSITION CONNECTION TO RIGID BARRIER, F&I- INDEX 536-001, TRAILING	EA	2	$ 1.30	$2.60
				Roadway Subtotal	$ 323,617.70

Signing & Pavement Marking Items

Pay Item	Description	Unit	Qty	Unit Cost	Total Cost
700-1-600	SINGLE COLUMN GROUND SIGN ASSEMBLY, REMOVE	EA	4	$ 260.00	$ 1,040.00
700-1-111	SINGLE COLUMN GROUND SIGN ASSEMBLY, F&I GROUND MOUNT, LESS THAN 12 SF	EA	2	$ 2,405.00	$ 4,810.00
706-1-3	RAISED PAVEMENT MARKER, TYPE B	EA	8	$ 13.00	$ 104.00
710-90	PAINTED PAVEMENT MARKINGS, FINAL SURFACE	LS	1	$ 3,900.00	$ 3,900.00
711-16-101	THERMOPLASTIC, STANDARD-OTHER SURFACES, WHITE, SOLID, 6"	GM	0.014	$ 7,800.00	$ 109.20
711-16-201	THERMOPLASTIC, STANDARD-OTHER SURFACES, YELLOW, SOLID, 6"	GM	0.014	$ 7,800.00	$ 109.20
713-103-101	PERMANENT TAPE, WHITE, SOLID, 6" FOR CONCRETE BRIDGES	GM	0.016	$ 52,000.00	$ 832.00
713-103-201	PERMANENT TAPE, YELLOW, SOLID, 6" FOR CONCRETE BRIDGES	GM	0.016	$ 52,000.00	$ 832.00
				Signing & Pavement Marking Subtotal	$ 11,736.40

Structures Items

Pay Item	Description	Unit	Qty	Unit Cost	Total Cost
102-71-15	TEMPORARY BARRIER, F&I, ANCHORED	LF	102	$ 105.00	$ 10,710.00
102-71-25	TEMPORARY BARRIER, RELOCATE, ANCHORED	LF	90	$ 85.00	$ 7,650.00
108-1	MONITOR EXISTING STRUCTURES- INSPECTION AND SETTLEMENT MONITORING	LS	1	$ 32,500.00	$ 32,500.00
108-2	MONITOR EXISTING STRUCTURES- VIBRATION MONITORING	LS	1	$ 78,000.00	$ 78,000.00
110-3	REMOVAL OF EXISTING STRUCTURES/BRIDGES	LS	1	$ 155,860.00	$ 155,860.00
400-4-5	CONCRETE CLASS IV, BRIDGE SUBSTRUCTURE	CY	25.6	$ 4,090.00	$ 104,704.00
400-4-47	CONCRETE CLASS IV, CAST IN PLACE TOPPING WITH SHRINKAGE REDUCING ADMIXTURE	CY	46.0	$ 2,460.00	$ 113,160.00
400-7-1	BRIDGE DECK GROOVING	SY	144	$ 50.00	$ 7,200.00
400-143	CLEANING & COATING CONCRETE SURFACE, CLASS 5	SF	854	$ 6.50	$ 5,551.00
400-148	PLAIN NEOPRENE BEARING PADS	CF	3.0	$ 3,390.00	$ 10,170.00
415-2-4	STAINLESS REINFORCING STEEL, SUPERSTRUCTURE	LB	1288	$ 10.19	$ 13,124.72
415-2-5	STAINLESS REINFORCING STEEL, SUBSTRUCTURE	LB	364	$ 10.19	$ 3,709.16
415-10-5	FIBER REINFORCED POLYMER BARS, #5 BAR	LF	8920	$ 3.39	$ 30,238.80
415-10-6	FIBER REINFORCED POLYMER BARS, #6 BAR	LF	472	$ 3.45	$ 1,628.40
450-8-51	PRESTRESSED BEAM: FLORIDA SLAB BEAM, BEAM DEPTH 12 " CFRP/SS, WIDTH 48-51"	LF	320	$ 919.10	$ 294,112.00
455-15-14	PREFORMED PILE HOLES, 24" TO 29" DRILL/PUNCH SIZE	LF	222	$ 175.59	$ 38,980.98
455-20-1	PILE INSPECTION, DRIVEN PILE	EA	12	$ 975.00	$ 11,700.00
455-34-23	PRESTRESSED CONCRETE PILING, 18" SQ W/FRP OR STAINLESS STEEL STRAND AND REINFORCING	LF	205	$ 479.86	$ 98,371.30
455-137	LOAD TEST (DYNAMIC), DATA COLLECTION AND ANALYSIS	EA	10	$ 1,040.00	$ 10,400.00
455-137-2	LOAD TEST (DYNAMIC), VERIFICATION TEST	EA	2	$ 2,340.00	$ 4,680.00
455-143-23	TEST PILES-PRESTRESSED CONCRETE, 18" SQ W/ FRP OR STAINLESS STEEL STRAND AND REINFORCING	LF	71	$778.34	$ 55,262.14
458-1-11	BRIDGE DECK EXPANSION JOINT, NEW CONSTRUCTION, F&I POURED JOINT WITH BACKER ROD	LF	69	$110.50	$ 7,624.50
515-4-1	BULLET RAIL, SINGLE RAIL	LF	80	$128.70	$ 10,296.00
521-5-13	CONCRETE TRAFFIC RAILING- BRIDGE, 36" SINGLE-SLOPE	LF	99	$ 296.05	$ 29,308.95
530-1100	RIPRAP, SAND-CEMENT BAGS	CY	4.4	$1,430.00	$ 6,292.00
				Structures Subtotal	$ 1,141,233.95

Utility Items (Non-Qualifying)					
Pay Item	Description	Unit	Qty	Unit Cost	Total Cost
460-98-2	PIPE HANGER, STAINLESS	EA	10	$ 1,903.99	$ 19,039.90
460-98-10	TEMPORARY PIPE SUPPORT	EA	2	$ 33,094.67	$ 66,189.34
				Utility Subtotal	$ 85,229.24

Subtotal of Qualifying Items	$ 1,476,588.05
Subtotal of Non-Qualifying Items	$ 85,229.24 -
Total	$ 1,561,817.29

TOTAL BASE BID PROJECT 1: $ $1,561,817.29 , (insert price using words) One-Million Five-Hundred Sixty-One Eight-Hundred Seventeen (Dollars) Twenty-Nine Cents

TOTAL BASE BID PROJECT 4: $ NA , (insert price using words) _____ (Dollars)

TOTAL BASE BID CONTRACT (ALL PROJECTS): $ NA , (insert price using words) _____ (Dollars)

9.01 Bidder will complete the work in accordance with the Contract Documents for the Total Base Bid itemized above.

SUBMITTED on August 19, 2026

State Contractor License No. CGC1522723. (If applicable.)

EXHIBIT B

FHWA-1273 – Revised October 23, 2023

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION
CONTRACTS

I. General
II. Nondiscrimination
III. Non-segregated 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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
XI. Certification Regarding Use of Contract Funds for Lobbying
XII. Use of United States-Flag Vessels:

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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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 more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to *DBAconformance@dol.gov*. 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.

(4) 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 will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advainsnces as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.*, the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature*. The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification*. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention*. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents*. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers*. The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements*. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay*. Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits*. Apprentices must 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 bodnign

(3) practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(4) *Apprenticeship ratio*. The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(5) *Reciprocity of ratios and wage rates*. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity*. The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. 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. 23 CFR 230.111(e)(2). 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 journeyworkers 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 as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, 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 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 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), 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 watchpersons 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. 29 CFR 5.5.

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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* 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.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

(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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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. 2 CFR 180.220 and 1200.220.

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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

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. 2 CFR 180.325.

* * * * *

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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor 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. 46 CFR 381.7.

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 (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) 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.

EXHIBIT C
GENERAL
CONDITIONS

ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms shall have the meanings indicated which are applicable to both the singular and plural thereof: Any conflict between Section 0070 General Conditions and Section 00701 Supplemental conditions, Section 00701 shall govern.

1.1 Acceptance – The formal action by the CITY accepting the Work as being completed after review by the CITY'S REPRESENTATIVE and recommendation for final completion.

1.2 Addenda - Written or graphic instructions and / or instruments issued by the CITY prior to the opening of the Bids.

1.3 Application for Payment - The form attached hereto as Exhibit A, or such other form as may be provided by CITY from time to time, which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

1.4 ARCHITECT – The individual or firm designated by the CITY to be the CITY'S REPRESENTATIVE on architectural matters during the construction of the Project, if an Architect is required.

1.5 Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.6 Bid Form. Standard printed form provided by CITY for use by Bidder to submit Bid for evaluation by CITY.

1.7 Bidding Documents – The Invitation to Bid, Instructions to Bidders, Bid Form, Bid Security, sample contract for construction, proposed Contract Documents, as defined herein, including but not limited to all documentation accompanying Bid, post Bid documentation submitted prior to Notice of Award, Qualifications Statement, General Conditions, Technical Conditions, Supplemental Conditions, Plans and Specifications, and any Addenda issued.

1.8 Bonds - Bid, performance and payment bonds and other instruments of security, if applicable.

1.9 Change Order - A document recommended by the CITY'S

REPRESENTATIVE, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement, substantially in the form of **Exhibit "B"** hereto.

1.10 CITY – The City of Marathon City Council or City Manager, as applicable.

1.11 CITY'S REPRESENTATIVE – The individual designated by the CITY in writing to act as the CITY'S REPRESENTATIVE with respect to the CONTRACTOR'S performance of the Work. Such individual shall have authority to transmit instructions, receive information, and make decisions with respect to the performance of the Work.

1.12 Claim - A written demand or assertion by CITY or CONTRACTOR seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract Documents. A demand for money or services by a third party is not a Claim.

1.13 Contract (also Construction Contract or Agreement) - The written instrument which is evidence of the agreement between CITY and CONTRACTOR covering the Work to be performed, including the Contract Documents and any exhibits that are attached to the Contract or made a part thereof; and any other Contract Documents which are incorporated in or referenced in the Contract and made a part thereof.

1.14 Contract Documents - The Contract Documents consist of the Drawings, Plans and Specifications, Bid Form, including all documentation accompanying Bid, post Bid documentation submitted prior to the Notice of Award, Qualifications Statement for Construction Contract, Addenda, and Notice of Award, Notice to Proceed, Certificates of Insurance, Payment and Performance Bonds, the General Conditions, Supplementary Conditions, Permits, any additional documents which are required to be submitted under the Contract, and all changes, amendments, modifications and supplements issued on or after the effective date of the Contract.

1.15 Contract Price - The total compensation payable by CITY to CONTRACTOR under the Contract Documents as stated in the Contract, for satisfactory completion of the Work.

1.16 Contract Time - The number of days or date stated in the Contract for the completion of the work.

1.17 CONTRACTOR - The person, firm or corporation with whom CITY has entered into the Contract for the performance of the Work as defined by the Contract Documents.

1.18 Day - A day shall constitute a calendar day of 24 hours measured from midnight

to the next midnight.

1.19 Defective - An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the recommendation for final payment by the CITY'S REPRESENTATIVE.

1.20 Drawings - The drawings, diagrams, illustrations and other data which show the character, extent and scope of the Work to be performed and which have been prepared or approved by the ARCHITECT or ENGINEER with the concurrence of the CITY'S REPRESENTATIVE and are referred to in the Contract Documents.

1.21 Effective Date -The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

1.22 ENGINEER – The individual or firm designated by the CITY to be the CITY'S REPRESENTATIVE for engineering related matters during construction of the Project, if an ENGINEER is required.

1.23 Field Order - A written order issued by the CITY'S REPRESENTATIVE which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time, substantially in the form of **Exhibit "C"** hereto.

1.24 Final Completion – The term Final Completion as used herein, shall mean that point at which, subsequent to Substantial Completion, all Work, or a phase of the Work if the Work has been directed in phases, required under the Contract Documents has been fully and properly completed, including, but not limited to, punch list items, issuance of certificates of final occupancy or use, issuance by all governmental or governing authorities having jurisdiction over the Work of all required final approval, permits, and licenses required, delivery of record drawings, electronic files, and manuals to the CITY.

1.25 Notice of Award - The written notice by CITY to the lowest responsive, responsible Bidder.

1.26 Notice to Proceed - A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.27 Partial Utilization - Use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial

Completion of all of the Work.

1.28 Project - The Work to be performed under the Contract Documents which may be the whole or a part as may be indicated elsewhere in the Contract Documents.

1.29 Punch List – A list of items of Work required by the Contract Documents, which after inspection by the Architect or Engineer, and the CITY'S REPRESENTATIVE, and the CONTRACTOR has been determined to be not completed, deficient or inconsistent with the Contract Documents.

1.30 Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.31 Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted to CITY by CONTRACTOR to illustrate material or equipment for some portion of the Work.

1.32 Site - Lands or areas upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR.

1.33 Specifications - Those portions of the Contract Documents consisting of written instructions and technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.34 Subcontractor - An individual, firm or corporation who enters into a Contract with CONTRACTOR for the performance of any part of CONTRACTOR'S Work. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

1.35 Submittals - Documents prepared by the Contractor or those working on his behalf (subcontractors, material suppliers and others) to show how a particular aspect of the Work is to be fabricated and installed. The CONTRACTOR'S submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.36 Substantial Completion - The term Substantial Completion as used herein, shall mean that point at which, as certified in writing by CITY'S

REPRESENTATIVE, based on a recommendation by the ARCHITECT or ENGINEER, the Work, or a designated phase thereof if the work has been directed in phases, is at a level of completion in substantial compliance with the Contract Documents such that the CITY or its designee can have beneficial use or occupy the Project and can use or operate the Project in all respects for its intended purpose. In the event the Work includes more than one phase, the CITY at its discretion may set Substantial Completion dates for each phase and may impose provisions for liquidated damages for each phase, including Final Completion.

1.37 Superintendent or Resident Superintendent – The executive representative for the CONTRACTOR present on the Work site at all times during progress, authorized to receive and fulfill instructions, including field orders, from the CITY and the ARCHITECT or ENGINEER and who is capable of supervising the work efficiently and communicating effectively with CITY staff and the general public.

1.38 Supplementary Conditions - That part of the Contract Documents which amends or supplements these General Conditions.

1.39 Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.40 Surety – The firm, corporation, or individual which is bound by the Performance and Payment Bonds with and for the CONTRACTOR, and which engages to be responsible for the CONTRACTOR'S acceptable performance of the Work and for his payment of all debts pertaining thereto in accordance with the bond documents and Section 255.05, Florida Statutes.

1.41 Total Base Bid - The sum of all the unit prices and lump sum times the quantities as provided in the Bid Form.

1.42 Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, and/or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following utility services or materials, including but not limited to: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage, and drainage removal, traffic or other control systems or water and/or footers, piles, structures, and/or foundations.

1.43 Unit Price Bid - the amount stated in the Bid Form as a price per unit of measurement for materials or labor as described in the Bidding Documents.

1.44 Work (Also referred to as the "Project") - The entire completed construction or the various separately identifiable parts thereof required to be furnished under

the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.45 Work Directive Change - A written directive to CONTRACTOR, substantially in the form of **Exhibit "D"** hereto, issued on or after the Effective Date of the Agreement and signed by CITY and recommended by the CITY'S REPRESENTATIVE ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in Section 00700.4.2 or 00700.4.3 or to any emergency circumstances under Section 0700.5.15. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

ARTICLE 2 – PRELIMINARY MATTERS

2.1 Commencement of Contract Time; Notice to Proceed:
The Work shall commence subsequent to the execution of this Contract by all parties and upon a written Notice to Proceed from CITY. No Work shall be done at the site prior to the date on which the Contract Time commences to run. CITY shall furnish to CONTRACTOR one final executed original of the Contract Documents.

2.2 Pre-Construction Conference:
Prior to CONTRACTOR starting the Work at the site, a conference attended by CONTRACTOR, CITY, ARCHITECT or ENGINEER, the CITY'S REPRESENTATIVE and others as appropriate will be held to discuss the schedules for Work referred to in Section 00700.2.3, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to all aspects of the Work, its progress and the Contract Documents.

2.3 Acceptance of Schedules:
Prior to submission of the first Application for Payment, the CONTRACTOR shall submit finalized schedule for the Work. The finalized progress schedule will be reviewed by the CITY for acceptance as providing an orderly progression of the Work to completion within the Contract Time. The finalized schedule of Shop Drawing submissions shall be acceptable to the CITY'S REPRESENTATIVE as providing a workable arrangement for processing the submissions. The finalized schedule of values shall also be acceptable to the CITY'S REPRESENTATIVE as to form and substance.

2.3.1 CONTRACTOR'S schedule of Submittals will be acceptable to CITY as providing a workable arrangement for reviewing and processing the required

Submittals. CITY'S acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work.

2.3.2 Price for construction mobilization and demobilization shall be distributed such that the mobilization and demobilization charges are equal. The demobilization shall be paid in the Final Application for Payment.

2.3.3 If at any time during the progress of Work, the CONTRACTOR'S actual progress is inadequate to meet the requirements of the Contract Documents, the CITY'S REPRESENTATIVE shall notify CONTRACTOR in writing of the CONTRACTOR'S failure to meet the Schedule. The CONTRACTOR shall within five (5) days, provide CITY with a written explanation of the steps necessary to maintain the project Schedule so as to complete the Work on or before the required Substantial Completion Date.

ARTICLE 3 – CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

3.1 Entire Agreement:

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Florida.

3.2 Intent:

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, labor, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or the CITY'S REPRESENTATIVE, or any of their consultants, agents or employees from those set forth in the Contract Documents. 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, except as may be otherwise specifically stated.

3.3 Reporting and Resolving Discrepancies

3.3.1 Reporting Discrepancies - If, during the performance of the Work, CONTRACTOR, or any of his Subcontractors or Suppliers, discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or

between the Contract Documents and any provision of any law or regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it immediately to CITY'S REPRESENTATIVE in writing. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by Section 00700.5.13.) until obtaining a written clarification from the CITY. After CONTRACTOR'S discovery of such a conflict, error or discrepancy, or after the date when CONTRACTOR should have reasonably known thereof, until the interpretation or clarification is obtained from the CITY, any Work done by CONTRACTOR which is directly or indirectly affected by same, will be at CONTRACTOR'S own risk and CONTRACTOR shall bear all costs and delay arising therefrom.

3.3.2 Resolving Discrepancies - Except as may be otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in Section 00700.3.4, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

3.3.2.1 The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

3.3.2.2 The provisions of any laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).

3.3.3 In resolving such conflicts, errors or discrepancies, the Contract Documents shall be given preference in the order specified in the Contract.

3.3.4 In all cases where notes, specifications, sketches, diagrams, details or schedules in the Specifications or Drawings, or between the Specifications and Drawings, conflict, the higher cost requirements shall be furnished by CONTRACTOR unless otherwise directed by the CITY.

3.3.4.1 No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of CONTRACTOR, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to CITY, or any of CITY'S Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Amending Contract Documents:

3.4.1 The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: via a written Field Order

3.4.2 via a written Work Directive Change

3.4.3 via a written Change Order

3.5 Continuing Duty:

The CONTRACTOR shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the CITY'S REPRESENTATIVE with copy to the ARCHITECT or ENGINEER of any conflict, ambiguity, error or omission which the CONTRACTOR may find with respect to these documents before proceeding with the affected Work

3.6 Supplements, Minor Variations or Deviations:

The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

3.6.1 Approval of a Shop Drawing, sample or submittal, by CITY'S REPRESENTATIVE, based on a recommendation by the ARCHITECT or ENGINEER;

3.6.2 Written interpretation or clarification by CITY'S REPRESENTATIVE, which does not adjust the Contract Price or Contract Times; or

3.6.3 A Field Order.

3.7 Ownership and Reuse of Documents:

Ownership of all documents, including but not limited to drawings, as-builts, plans and specifications and related computerized documents utilized or prepared by the CONTRACTOR in the performance of the Work shall remain with the CITY. The CONTRACTOR, any Subcontractors or Supplier or other person or organization performing or furnishing any of the Work under a Contract with the CITY shall not reuse any documents without the prior written consent of the CITY.

ARTICLE 4 – AVAILABILITY OF LANDS, PHYSICAL CONDITIONS, REFERENCE POINTS

4.1 Availability of Lands:

CITY shall furnish, as 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 which are designated for the use by CONTRACTOR. CONTRACTOR

shall provide at CONTRACTOR'S own expense and without liability to CITY any and all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. CONTRACTOR shall furnish to CITY copies of written permission that is obtained from the owners of such additional lands and access for such facilities in a form agreement. CONTRACTOR shall also furnish to CITY copies of all permits from required governmental authorities for temporary construction facilities or storage of materials and equipment.

4.2 Physical Conditions: Physical conditions information includes:

4.2.1 Reports and Drawings:

4.2.1.1 Reports of explorations and tests of subsurface conditions at or contiguous to the Site; and

4.2.1.2 Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site.

4.2.2 Differing Subsurface or Physical Conditions.

4.2.2.1 CONTRACTOR may make a claim pursuant to Section 00700.4.2.2.1.2, Section 10, and Section 11 if CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed:

4.2.2.1.1 Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Project and is of an unforeseen nature that such conditions could not have been discovered by CONTRACTOR'S pre bid inspection, or if the conditions encountered differ from what is expressly stated in the Contract documents will be encountered.

4.2.2.1.2 CONTRACTOR shall, within 24-hours after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Section 00700.5.15), notify CITY in writing about such condition. CONTRACTOR'S timely submission of written notice to CITY shall be a strict condition precedent to CONTRACTOR'S entitlement to make a claim. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of a written order to do so from the CITY'S

REPRESENTATIVE.

4.2.3 Underground Facilities:
If digging in public right-of-way or on private property, applicant shall notify Sunshine 811, to find out where buried facilities (electric, gas, telephone, cable, water) are located as required by Chapter 556, F.S. The cost of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for:

4.2.3.1 Locating all underground facilities; prior to commencement of the Work;

4.2.3.2 Coordination of the Work with the owners of such underground facilities, including CITY, before, during and after construction; and

4.2.3.3 The safety and protection of all such underground facilities and repairing any damage thereto resulting from the Work.

4.2.4 Hazardous Environmental Condition at Site:
CONTRACTOR shall be responsible for any hazardous environmental conditions created by the CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible. If CONTRACTOR encounters a hazardous environmental condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a hazardous environmental condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition;
(ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Section 00700.5.15); and
(iii) notify CITY and immediately thereafter confirm such notice in writing.

ARTICLE 5 – CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES

5.1 Contractor Performance:
The Contractor shall perform all of the Work required by the Contract Documents and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work, and shall perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and shall perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents.

5.2 Contractor Representations and Warranties:
The Contractor represents and warrants to the CITY that:

5.2.1 It is financially solvent and has sufficient working capital to perform the

obligations under this Construction Contract;

5.2.2 It is experienced and skilled in the construction of the type of Project described in the Contract Documents;

5.2.3 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;

5.2.4 It is a fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "Contractor" in the Construction Contract;

5.2.5 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings or other method of inspection it selects; and the location of all utility lines including but not limited to electrical and water, sanitary, wastewater and storm drain lines.

5.2.6 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.

5.2.7 When Notice of Final Completion is submitted by CONTRACTOR to CITY, the completed Work shall conform to all of the requirements of the Contract Documents including resolution of Punch List items and be completely ready for use or occupancy.

5.3 Supervision and Superintendence:

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. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

5.4 Resident Superintendent:

Before the commencement of Work, the CONTRACTOR shall designate a competent, authorized representative (herein Resident Superintendent or Superintendent), acceptable to the CITY in its sole discretion, to represent and act for the CONTRACTOR. CONTRACTOR shall:

5.4.1 Inform CITY in writing, of the name, address and contact information of such

representative together with a clear definition of the scope of his authority to represent and act for CONTRACTOR and shall specify any and all limitation on such authority.

5.4.2 Provide notice to the CITY in writing of any subsequent changes in the foregoing.

5.4.3 The Superintendent shall be present or be duly represented at the site of the Work at all times when the Work is actually in progress, and shall be able to communicate effectively with CITY staff and the general public.

5.4.4 During periods when portions of the Work are suspended, arrangements for an authorized representative acceptable to the CITY shall be made for any emergency.

5.4.5 All notices, determinations, instructions and other communications given to the CONTRACTOR'S Superintendent shall be binding upon the CONTRACTOR.

5.5 Labor and Materials:

Unless otherwise provided in the Contract Documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

5.5.1 The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR'S employees, and other persons carrying out the Contract. The CONTRACTOR shall not permit employment of unfit persons, subcontractors or persons not skilled in tasks assigned to them.

5.5.2 Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular Working hours, and CONTRACTOR will not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without CITY'S prior written consent. Regular Working Hours are considered Monday through Friday between 8:00 a.m. and 7:00 p.m. Longer hours and weekend hours can be requested and may be granted on a case by case basis.

5.5.3 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the CITY'S REPRESENTATIVE, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract

Documents; but no provision of any such instructions will be effective to assign to the CITY'S REPRESENTATIVE, or any of CITY'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to those provided in the Contract Documents.

5.5.4 All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY.

5.5.5 Manufacturers' or Suppliers' warranties for all materials products and equipment to be furnished by CONTRACTOR and to be incorporated into the completed Work shall be furnished to the CITY through CONTRACTOR. CONTRACTOR shall obtain from Suppliers of all materials, products and equipment, complete information as to any special condition or restriction to be applied in the use of these items. Should the manner or method of installation, specified performance or test results as set forth in the Specifications be contrary to the manufacturer's recommendations for use of the product, CONTRACTOR shall notify the CITY in writing of such conflict as soon as reasonably possible, but no later than the time of Shop Drawing submittal including those products. Failure to provide such written notice before proceeding with the Work affected thereby shall be certification by CONTRACTOR that the specification requirements will be met by the materials, products and equipment, and that the cost and time required to perform the Work affected thereby have been included in the Contract Price and in the schedule for the performance of the Work within the Contract Time.

5.5.6 Equipment: contractor shall not purchase any equipment, which shall be transferred for ownership to the city or other agency.

5.6 Substitutes or "Or Equal" Items:

5.6.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT or ENGINEER if sufficient information is submitted by CONTRACTOR to allow a determination that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by the CITY'S REPRESENTATIVE from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to the CITY'S REPRESENTATIVE for acceptance thereof, certifying that the proposed substitute will 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 must 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 (or in the provisions of any other direct Contract with CITY for the Work) to adapt the design to the proposed substitute and whether or not incorporation or use of 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 will be indicated. The CITY may require the application to contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign affected by the resulting change, all of which shall be considered by the CITY'S REPRESENTATIVE based on the recommendation of the ARCHITECT or ENGINEER in evaluating the proposed substitute. The CITY'S REPRESENTATIVE may require CONTRACTOR to furnish, at CONTRACTOR'S expense, additional data about the proposed substitute.

5.6.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the CITY'S REPRESENTATIVE based on the recommendation of the ARCHITECT or ENGINEER, if CONTRACTOR submits sufficient information to allow the CITY'S REPRESENTATIVE to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the CITY'S REPRESENTATIVE will be similar to that provided in Section 00700.5.6.1 as applied by the CITY'S REPRESENTATIVE and as may be supplemented in the Contract Documents.

5.6.3 The CITY'S REPRESENTATIVE, ARCHITECT or ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. The CITY will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the prior written acceptance and approval by the CITY, which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

5.7 Concerning Subcontractors, Suppliers and Others:

5.7.1 CONTRACTOR shall be fully responsible to CITY for all acts and omissions

of the Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with CONTRACTOR to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between CITY, CITY'S REPRESENTATIVE or the ARCHITECT or ENGINEER and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY, CITY'S REPRESENTATIVE or the ARCHITECT or ENGINEER to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations governing the Work.

5.7.2 CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those not acceptable to CITY), whether initially or as a replacement, against whom CITY may have objection. CONTRACTOR shall submit names, addresses and contact information of any and all Subcontractors to CITY in writing prior to commencement of Work and during Work progress if Subcontractors change or are added.

5.7.3 CONTRACTOR shall be solely responsible for scheduling and coordinating Subcontractors, Engineers, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Engineers, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the CITY through CONTRACTOR. **CONTRACTOR shall require all subcontractors to register with the CITY's Building Department prior to commencement of Work.**

5.7.4 The CITY requires the identity of Subcontractors, Suppliers, and other individuals or entities to be submitted to the CITY in advance of the Work for acceptance by CITY. The CONTRACTOR shall not remove or replace any Subcontractors or Suppliers listed in its Bid subsequent to execution of the Contract without the prior written approval of the CITY. CITY'S acceptance of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by CITY of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of CITY to reject defective Work.

5.7.5 All Work performed for CONTRACTOR by a Subcontractor or supplier furnishing equipment or materials will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or supplier, which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY. Furthermore, CONTRACTOR shall assign to CITY all of its rights, interests, benefits and privileges under any agreement with a Subcontractor pursuant to an Assignment substantially in the form attached hereto as **Exhibit "E"**. No such action by CONTRACTOR or Subcontractor shall create a contractual relationship between the CITY and any Subcontractor.

5.8 Patent Fees, Licenses and Royalties:

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

5.9 Permits, Fees and Licenses:

CONTRACTOR shall be responsible for obtaining and paying for all permits and licenses required by any Federal, State or other agencies to perform the Work (other than those obtained by the CITY). CONTRACTOR shall post at the site of the Work required permits and maintain on site other permit documents as appropriate.

5.10 Laws and Regulations:

5.10.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work. Neither CITY, CITY'S REPRESENTATIVE nor the ARCHITECT or ENGINEER shall be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations.

5.10.2 If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws or regulations, CONTRACTOR shall give CITY'S REPRESENTATIVE with copy to the ARCHITECT or ENGINEER prompt written notice thereof, and any necessary changes will be authorized as appropriate by CITY'S REPRESENTATIVE. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such laws or regulations, and without such notice to CITY, CONTRACTOR shall bear all costs arising therefrom.

5.11 Taxes:

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with all applicable Federal, State and local laws and regulations during the performance of the Work.

5.12 Use of Site and Premises:

5.12.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto whether owned by CITY or by a third party, resulting from the performance of the Work. Should any claim be made against the CITY or the ARCHITECT or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. Notwithstanding this provision, the general indemnification provided elsewhere in this Contract specifically applies to claims arising out of CONTRACTOR'S use of the premises and publicly or privately owned and or areas contiguous thereto.

5.12.2 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all public and private property not designated for alteration by the Contract Documents.

5.12.3 CONTRACTOR shall not load nor permit any part of any Work to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

5.13 Record Documents:

5.13.1 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to CITY, the CITY'S REPRESENTATIVE and the ARCHITECT or ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to the CITY'S REPRESENTATIVE for the CITY.

5.13.2 The record drawings shall be marked up as the Work progresses to reflect

current conditions and shall become the "as-built" plans. The revisions are to be indicated in a neat, well-organized manner and are to include the elevation and plan location of any utilities, structures, etc., encountered and/or installed. A "record" survey book will be kept and shall include the following items:

5.13.2.1 The location and elevation of all existing utilities, structures, etc. encountered.

5.13.2.2 The finished product location and elevation of all utilities and structures installed, including, but not limited to, fire hydrants, catch basin and manhole lids, inverts, pipes, and any and all underground structures.

5.13.2.3 All record notes shall be kept in book(s) designated "record" and no other survey notes will be kept in such books. CONTRACTOR will be required to review with the CITY the status of the "as-built" plans and the "record" survey notes in connection with CITY'S evaluation of an application for payment. Failure to maintain current record documents shall be just cause for the CITY to withhold payments for Work performed.

5.13.2.4 Upon completion of the Work, CONTRACTOR shall deliver to the CITY a reproducible set of updated Contract plans. CONTRACTOR will transfer all its "as-built" information to these reproducible and deliver the resulting "as-built" set of plans, together with the record survey book to the CITY. Each completed set of "as-built" drawings must include on its face, a certified statement by the CONTRACTOR that the set of "as- built" drawings accurately depicts the actual work as constructed. The Contractor shall also deliver the "as-built" plans to the CITY electronically in CAD format.

5.14 Safety and Protection:

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

5.14.1.1 All persons on the Site or who may be affected by the Construction;

5.14.1.2 All the Construction Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

5.14.1.3 Other public and private property at the Site or adjacent thereto,

including trees, shrubs, lawns, walks, pavements roadways, structures, utilities, and underground facilities not designated for removal, relocation or replacement in the course of construction.

5.14.2 CONTRACTOR shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent public and private property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in Sections 00700.5.14.1.2 or 00700.5.14.1.3 caused, directly or indirectly, in whole or in part, by CON- TRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by CONTRACTOR. CONTRACTOR'S duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the CITY has made final payment to CONTRACTOR.

5.14.3 CONTRACTOR shall furnish watchmen, flagmen, warning signs, cones, barricades, flashing lights and other necessary safeguards in sufficient numbers and at appropriate locations as necessary to protect and divert vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new Work. Per FDOT Standard Index 600 series, CONTRACTOR and all Subcontractors shall take all necessary precautions to guard against and eliminate all possible fire hazards and prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. Open flames including the use of flambeaux are strictly prohibited. No additional payment will be made for signs, barricades, lights, flags, watchmen, flagmen, required fire extinguishing apparatus and personnel, and other protective devices. CONTRACTOR shall not use explosives on the site, nor allow explosives of any type or nature to be brought upon the site of the construction, without the express written approval of City Manager. When the use of explosives is authorized by the City Manager, CONTRACTOR shall exercise the utmost care in handling and usage of such explosives for the protection of life and property. All explosives shall be stored in a safe manner and storage places shall be clearly marked - "DANGEROUS - EXPLOSIVES" and placed in the care of competent watchmen. When such use of explosives becomes necessary, CONTRACTOR shall furnish to CITY, proof of insurance coverage, adequately providing public liability and property damage insurance as a rider attached to CONTRACTOR'S policies unless otherwise included.

5.14.4 For any work in any right-of-way, CONTRACTOR shall have a Maintenance

of Traffic (MOT) plan previously approved by the CITY. The CONTRACTOR shall provide the CITY a Certification for Advanced MOT training and a 24-hour telephone number where the CITY may contact the Advanced MOT Specialist if problems are encountered. The Advanced MOT Specialist shall be available to meet on the job site with 45 minutes notice.

5.14.5 CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

5.15 Emergencies:

5.15.1 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR is obligated to act in a timely manner to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. CONTRACTOR shall be responsible for providing first aid and medical care in accordance with applicable laws and regulations.

5.15.2 The CONTRACTOR shall be required to secure or remove from the Site, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the Work, the CITY'S installations or public or private property. Site excavations shall be required to be secured or backfilled. No CONTRACTOR equipment may be parked within 100 feet of any CITY facilities. In the event of the issuance of a storm warning, the CITY will attempt to notify the CONTRACTOR, however, the CONTRACTOR is responsible for preparing for a storm event. The CONTRACTOR shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.

5.15.3 The CITY'S REPRESENTATIVE may, but is not required to, order the Work be stopped if a condition of imminent danger exists. Nothing shall be constructed to shift responsibility or risk of loss for injuries or damages, cost of stoppage or delay of work, from the CONTRACTOR to the CITY. The CONTRACTOR shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at worksite and work.

5.16 Shop Drawings and Samples:

5.16.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Conditions herein, CONTRACTOR shall submit Shop Drawings to the CITY'S

REPRESENTATIVE for review and approval, based on the recommendation of the ARCHITECT or ENGINEER. Shop Drawings shall be submitted in accordance with the accepted schedule of Shop Drawing submissions or for other appropriate action if so indicated. Five (5) copies of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission shall be submitted to the CITY'S REPRESENTATIVE, with a copy to the ARCHITECT or ENGINEER. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the CITY'S REPRESENTATIVE, ARCHITECT or ENGINEER, to
review the information as required.

5.16.2 CONTRACTOR shall also submit to the CITY'S REPRESENTATIVE for review and approval, with the recommendation of the ARCHITECT or ENGINEER, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

5.16.3 Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

5.16.4 At the time of each submission, CONTRACTOR shall give the CITY'S REPRESENTATIVE, with copy to the ARCHITECT or ENGINEER, specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the CITY'S REPRESENTATIVE for review and approval, with the recommendation of the ARCHITECT or ENGINEER, of each such variation. Failure to point out such departures shall not relieve CONTRACTOR from his responsibility to comply with the Contract Documents.

5.17 Temporary Utilities:

5.17.1 Water for the Work: The CONTRACTOR shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Contractor or Subcontractors unless the contrary is

provided for elsewhere in the Contract Documents. Copies of the receipts for payment shall be given to the CITY prior to final payment.

5.17.2 Electric for the Work: The CONTRACTOR shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the CONTRACTOR or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents. Copies of the receipts for payment shall be given to the CITY prior to final payment.

5.17.3 Temporary Sanitary Facilities:

5.17.3.1 The CONTRACTOR shall provide and maintain temporary sanitary facilities at a location approved by the CITY in a neat and sanitary condition and such accommodations and facilities shall be for the use of its employees and subcontractors as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues, including the CITY building department.

5.17.3.2 No nuisance will be permitted.

5.17.3.3 Upon completion of Work, such sanitary facilities shall be removed and the premises left in a sanitary condition.

5.18 Continuing the Work: CONTRACTOR shall carry on the Work and adhere to the progress Schedule during all disputes or disagreements with CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, unless CONTRACTOR and CITY may otherwise agree in writing. Suspension of the Work by CONTRACTOR during any dispute or disagreement with CITY shall entitle CITY to terminate the CONTRACT for cause.

5.19 Indemnification:

5.19.1 General Indemnification:

"To the extent provided by law, CONTRACTOR shall indemnify, defend, and hold harmless the CITY and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of CONTRACTOR, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by CONTRACTOR.

The foregoing indemnification shall not constitute a waiver of the Department's or CITY's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by CONTRACTOR to indemnify CITY for the negligent acts or omissions of [RECIPIENT], its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by CONTRACTOR to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement."

5.19.2 Patent and Copyright Indemnification:
CONTRACTOR agrees to indemnify and hold harmless CITY and Florida Department of Transportation, its officers, and employees, from all such claims and fees, and from any and all actions of every claim and description that may be brought against CITY, its officers and employees, on account of any claims, fines, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against CITY, its officers and employees for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

5.19.3 CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of CITY, in connection with the foregoing indemnifications, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of CITY when applicable.

5.19.4 In the event that any claims are brought or actions are filed against the CITY that are encompassed by the Contractor's duty to indemnify as stated in this Agreement, the CONTRACTOR agrees to defend against any such claims and actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. CITY reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of CONTRACTOR.

5.19.5 Such CONTRACTOR'S indemnification shall not be limited to the amount of comprehensive general liability insurance which CONTRACTOR is required to obtain under the Contract. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Section 768.28 Florida Statutes, as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.

5.19.6 Any terms or conditions of the indemnification that may take place after expiration or termination of the Contract shall survive termination or expiration of the Contract.

5.20 Responsibility for Security of Work Site

5.20.1 CONTRACTOR shall at all times conduct, at its sole expense, all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any real property or tangible personnel property be it publicly or privately owned.

5.20.2 CONTRACTOR shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.

5.20.3 CONTRACTOR shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions as described in Sections 00700.5.20.1 and 00700.5.20.2 and shall be solely responsible for discovery, determination and correction of any such condition.

5.20.4 CONTRACTOR shall cooperate with the CITY'S REPRESENTATIVE on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by CITY.

5.20.5 Security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.

5.20.6 Compliance with CITY security requirements shall not relieve CONTRACTOR of its responsibility for maintaining property security for the above noted items, nor shall it be constructed as limiting in any manner CONTRACTOR's obligation to undertake reasonable action as required to establish and maintain secure conditions at the Site.

5.20.7 CONTRACTOR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to the CITY'S REPRESENTATIVE in a timely manner.

ARTICLE 6 – OTHER WORK

6.1 Related Work at Site:

CITY may perform other Work related to the Project at the Site by CITY'S own forces, have other Work performed by utility owners or directly Contract for such other work. Written notice thereof will be given to CONTRACTOR prior to starting any such other Work not previously noticed to CONTRACTOR.

ARTICLE 7 – CITY'S RESPONSIBILITIES - GENERALLY

7.1 CITY shall furnish the data readily available and in its possession required of CITY under the Contract Documents.

7.2 CITY will provide lands and easements for the Work as required. CITY will make available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site that are known and readily available to CITY at the time of executing the Contract.

7.3 Limitations on CITY'S Responsibilities:

The CITY shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with laws and regulations applicable to the performance of the Work. CITY will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

7.4 Waiver of Warranty of Constructability

CONTRACTOR AGREES THAT THERE IS NO IMPLED OR EXPRESS WARRANTY OF CONSTRUCTABILITY WITH REGARD TO THE WORK OR DESIGN ENCOMPASSED BY THE CONTRACT.

ARTICLE 8 – ADMINISTRATION OF THE CONTRACT.

8.1 Visits to Site:

ARCHITECT or ENGINEER as well as the CITY'S REPRESENTATIVE may make visits to the site at intervals appropriate to the various stages of construction to inspect the progress and quality of the executed Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of such visits and on-site inspections, the ARCHITECT or ENGINEER shall keep the CITY'S REPRESENTATIVE informed of the progress of the Work and shall guard CITY against defects and deficiencies in the Work.

8.2 Technical Clarifications and Interpretations:

The CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, will issue with reasonable promptness such written clarifications or interpretations of the technical requirements of the Contract Documents as the CITY'S REPRESENTATIVE may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in this Contract. Should CONTRACTOR fail to request

an interpretation of questionable items in the Contract Documents neither CITY, CITY'S REPRESENTATIVE nor ARCHITECT or ENGINEER will thereafter entertain any excuse for failure to execute the Work in a satisfactory manner.

8.3 Authorized Variations in Work:

CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, may authorize minor variations in the Work from the technical requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on CITY, and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a field order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided elsewhere in this Contract.

8.4 Approval of Work:

The CITY'S REPRESENTATIVE will have the authority to disapprove or reject Work that the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, believes to be defective, and will also have authority to

require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed.

8.5 Decisions on Disputes:

The CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, will be the initial interpreter of the technical requirements of the Contract Documents and the acceptability of the Work thereunder. Claims, disputes and other matters by the CONTRACTOR relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims for changes in the Contract Price or Contract Time shall be referred to the CITY'S REPRESENTATIVE in writing with a request for a formal decision in accordance with this Section with copies to the ARCHITECT or ENGINEER and City Manager. Notwithstanding any dispute between the parties, CONTRACTOR shall continue the work and maintain the schedule.

ARTICLE 9 – CHANGES IN THE WORK (See Section 00701 4.3)

ARTICLE 10 – CHANGE OF CONTRACT PRICE (See Section 00701 4.3)

ARTICLE 11 CONTRACT TIME

11.1 Commencement:
The date of commencement of the Work is the date established in the Notice to Proceed.

11.2 Time of Substantial Completion:
The date of Substantial Completion of the Work or designated portion thereof is the date certified by the CITY'S REPRESENTATIVE when construction is sufficiently complete, in accordance with the Contract Documents, so CITY can occupy or utilize the Work for the purposes for which it is intended.

11.3 Change of Contract Time:

11.3.1 All time limits stated in the Contract Documents are of the essence. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS, DISRUPTION, INTERFERENCE, HINDRANCE (collectively "delay"). 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 no limited to costs of acceleration or inefficiency, arising because of delay, from any cause whatsoever, whether such delay be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area, which shall be defined, for purposes hereof, as four (4) rain days per month.

11.3.2 NO RECOVERY FOR EARLY COMPLETION. If the CONTRACTOR submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the CITY shall not be liable to the CONTRACTOR for any costs incurred because of delay or hindrance should the CONTRACTOR be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the CITY to the CONTRACTOR shall be consistent with and applicable only to the completion of the work and completion dates set forth in these General Conditions.

11.3.3 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for extension of time shall be made in writing to the CITY'S REPRESENTATIVE in accordance with Section 10.2 hereof; otherwise, the claim shall be waived. In the case of a continuing delay only one claim is necessary.

11.4 Liquidated Damages:

11.4.1 Liquidated damages shall be assessed pursuant to Section 00701

Subsection 8 ARTICLE 12 – CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

12.1 CONTRACTOR warrants and guarantees to CITY all Work shall be in accordance with the Contract Documents and will not be defective.

12.2 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents:

12.2.1 Observations by CITY or CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER;

12.2.2 Payment by CITY of any progress or final payment;

12.2.3 The issuance of a certificate of Substantial Completion, certificate of Final Completion, or any payment related thereto by CITY;

12.2.4 Use or occupancy of the Work or any part thereof by CITY;

12.2.5 Any acceptance by CITY or any failure to do so;

12.2.6 Any review and approval of a Submittal or the issuance of a notice of acceptability by the CITY'S REPRESENTATIVE;

12.2.7 Any inspection, test, or approval by others; or

12.2.8 Any correction of defective Work by CITY.

12.3 Access to Work:
The CITY'S REPRESENTATIVE, ARCHITECT or ENGINEER and other representatives of CITY, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for proper and safe conditions for such access.

12.4 Tests and Inspection:

12.4.1 CONTRACTOR shall give CITY timely notice of readiness of the Work for all required inspections, tests, observations or approvals. Inspections, tests or observations by the CITY'S REPRESENTATIVE, the ARCHITECT or ENGINEER, CITY or its agents may be performed at its discretion to provide information to the CITY on the progress of the Construction.

However such information is not intended to fulfill the CONTRACTOR'S obligations in accordance with the Contract Documents.

12.4.2 CONTRACTOR shall assume full responsibility, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

12.5 Uncovering the Work:

If any Construction that is to be inspected, tested or approved is covered without written concurrence of CITY'S REPRESENTATIVE, it must, if requested by CITY or the CITY'S REPRESENTATIVE, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense and will exclude the right to an increase in the Contract Price or Contract Time unless CONTRACTOR has given CITY or the CITY'S REPRESENTATIVE timely written notice of CONTRACTOR'S intention to cover such Construction and CITY or the CITY'S REPRESENTATIVE has not acted with reasonable promptness in response to such notice.

12.5.1 If CITY considers it necessary or advisable that covered Work be observed by CITY'S REPRESENTATIVE or the ARCHITECT or ENGINEER, or inspected or tested by others, CONTRACTOR, at CITY'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services and any additional expenses experienced by the CITY due to delays to others performing additional work, other contractual obligations, and CITY shall be entitled to issue an appropriate deductive Change Order. CONTRACTOR shall further bear the responsibility for maintaining the schedule and will not be allowed an increase in Contract Price or Contract Time due to the uncovering. If, however, such Construction is not found to be defective, and Section 00700.8.5 is not applicable, CONTRACTOR shall be allowed an increase in the Contract Price or the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if it makes a claim therefore as provided in the Contract Documents.

12.6 CITY May Stop the Work:

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order

CONTRACTOR to stop the Work, or any portion thereof, until the cause for such failure has been eliminated; however, this right of CITY to stop the Work shall

not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party. CONTRACTOR shall not be allowed an increase in Contract Price or the Contract Time or both as a result of the stopping of Work under this section.

12.7 Correction or Removal of Defective Work:
If required by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/or ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the CITY'S REPRESENTATIVE, upon the recommendation of the ARCHITECT or ENGINEER, remove it from the site and replace it with non- defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of the CITY'S REPRESENTATIVE, the ARCHITECT or ENGINEER, attorneys and other professionals) made necessary thereby.

12.8 One Year Correction Period:
Without prejudice to any other right of the City, if within one (1) year after the date of final completion or within any designated manufacturer's warranty, whichever is greater, or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective Work, or, if it has been rejected by CITY or the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective Work corrected or the rejected Work removed and replaced, and all of the CITY'S direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of the ARCHITECT or ENGINEER) will be reimbursed by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by written amendment.

12.9 CITY shall reserve and retain all of its rights and remedies at law and equity against CONTRACTOR and its surety for damages and for corrections of any and all latent defects.

12.10 Extended Warranty Period Due to Defective Construction:
Any defective Construction that is either corrected or rejected and replaced will

be warranted and guaranteed for a period of one (1) year from the date of acceptance of such correction or removal and replacement, even if it had previously been corrected or replaced, in accordance with the provisions of this Article 12. If within such extended

Warranty Period, the Work is once again found to be defective, CITY shall be entitled to all of CITY'S rights and remedies under this Article.

ARTICLE 13 – TRUTH-IN-NEGOTIATION

13.1 CONTRACTOR warrants that all proposal price items are true, complete and accurate and include all costs, overhead, profit and all other amounts associated with such items and may be relied upon by CITY when making additions or deductions to the Contract Price. CONTRACTOR further warrants that all cost and pricing data provided to the CITY'S REPRESENTATIVE and CITY during the term of the Contract shall be complete, accurate and current when provided. Should there be any downward changes in the Cost and Pricing Data previously submitted, the CONTRACTOR shall notify and provide the new information to the CITY'S REPRESENTATIVE and CITY immediately. CITY shall be entitled to issue an appropriate Change Order to adjust downward the Contract Price and Contract Times based on correcting inaccurate or incomplete information provided by CONTRACTOR.

13.2 Despite any provisions in the Contract Documents to the contrary, any amounts paid by CITY to CONTRACTOR in excess of that to which it is entitled under the Contract Documents shall be reimbursed by CONTRACTOR to CITY. The making of Final Payment to CONTRACTOR shall not be a waiver of CITY'S right to reimbursement from CONTRACTOR nor shall it discharge CONTRACTOR'S obligation to refund the overpayment. The terms of this Article shall survive the CITY'S making Final Payment.

13.3 CONTRACTOR shall insert a provision containing all the requirements of this Article, in all Subcontracts between CONTRACTOR and Subcontractors, Engineers or Suppliers or other persons, altering the section only as necessary to identify properly the contracting parties.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Schedule of Values:
The schedule established as provided in Section 700.2.3 will serve as the basis for progress payments and will be incorporated into the Application for Payment.

14.2 Application for Progress Payment:
At least twenty (20) days before each progress payment is scheduled (but not

more often than once a month), CONTRACTOR shall submit for review to the CITY'S REPRESENTATIVE with copy to the ARCHITECT and/or ENGINEER an Application for Payment, in the form provided by **Exhibit "A"** hereto, filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that CITY has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect CITY'S interest therein, all of which will be satisfactory to CITY. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

14.2.1.1 Each application shall contain an affidavit or partial release of lien by CONTRACTOR that partial payments received from CITY for the Work have been applied by CONTRACTOR to discharge in full all of CONTRACTOR'S obligations, including payments to subcontractors, stated in prior Applications For Payment.

14.3 CONTRACTOR'S Warranty of Title:
CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to CITY no later than the time of payment free and clear of all Liens.

14.4 Review of Applications for Progress Payments:

14.4.1 All payments shall only be from appropriations budgeted on an annual basis.

14.4.2 Consistent with Section 218.75, Florida Statutes,

14.4.2.1 The due date for payment for the purchase of construction services by the CITY is determined as follows:

14.4.2.1.1 If an agent must approve the payment request or invoice before the payment request or invoice is submitted to the CITY, payment is due 25 business days after the date on which the payment request or invoice is stamped as received.

13.4.2.1.2. If an agent need not approve the payment request or invoice submitted by the CONTRACTOR, payment is due 20 business days after the date on which the payment request or invoice is stamped as received.

13.4.2.1.3 Contractor shall submit payment requests to the CITY REPESENTATIVE. CONTRACTOR's submission of a payment request or invoice to the CITY REPESENTATIVE shall be stamped as received and shall commence the time periods for payment or rejection of a payment request or invoice as provided in Section 218.75, Florida Statutes.

14.4.2.2 If a payment request or invoice does not meet the Contract requirements, the CITY must reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received. The rejection must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper.

14.4.2.3 If a payment request or an invoice is rejected and the CONTRACTOR submits a payment request or invoice that corrects the deficiency, the corrected payment request or invoice must be paid or rejected on the later of:

14.4.2.3.1 Ten business days after the date the corrected payment request or invoice is stamped as received; or

14.4.2.3.2 If the CITY is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the CITY held after the corrected payment request or invoice is stamped as received.

14.4.2.4 If a dispute between the CITY and the CONTRACTOR cannot be resolved by the procedure in subsection 14.4.2.3, the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction Contract or in any applicable ordinance. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in Section 218.76(2), Florida Statutes.

14.4.2.5 If a CITY disputes a portion of a payment request or an invoice, once a pay application is submitted in acceptable format, the undisputed portion shall be paid timely.

14.4.2.6 When the CONTRACTOR receives payment from the CITY for labor, services, or materials furnished by subcontractors and suppliers hired by the CONTRACTOR, the CONTRACTOR must remit payment due to those subcontractors and suppliers within 10 days after the CONTRACTOR's receipt of payment. If a subcontractor receives payment from a CONTRACTOR for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor must remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. This does not prohibit a CONTRACTOR or subcontractor from disputing,

pursuant to the terms of the relevant Contract, all or any portion of a payment alleged to be due to another party if the CONTRACTOR or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The CONTRACTOR or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

14.4.2.7 PUNCH LIST

14.4.2.7.1 The CITY and CONTRACTOR shall develop a single punch list of items required to render complete, satisfactory, and acceptable the construction services purchased by the CITY.

14.4.2.7.2 The CITY and the CONTRACTOR will develop and review the list within a reasonable time of the Contractor's written request for development of the punch list.

14.4.2.7.3 For construction projects having an estimated cost of less than $10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the Contract, or, if not defined in the Contract, upon reaching beneficial occupancy or use; or

14.4.2.7.4 For construction projects having an estimated cost of $10 million or more, within 30 calendar days, or, if extended by Contract, up to 60 calendar days after reaching substantial completion of the construction services purchased as defined in the Contract, or, if not defined in the Contract, upon reaching beneficial occupancy or use.

14.4.2.7.5 The punch list will be delivered to the CONTRACTOR within 5 days after the list of items has been developed and reviewed in accordance with the time periods set forth above.

14.4.2.7.6 If the Work relates to the purchase of construction services on more than one building or structure, or involves a multiphase Project, the punch list shall be developed for each building, structure, or phase of the Project within the time limitations provided above.

14.4.2.7.7 The final Contract completion date shall be at least 30 days after the delivery of the list of items. If the list is not provided to the CONTRACTOR by the agreed upon date

for delivery of the list, the Contract time for completion will be extended by the number of days the CITY exceeded the delivery date. Damages may not be assessed against a CONTRACTOR for failing to complete a Project within the time required by the Contract, unless the CONTRACTOR

failed to complete the Project within the Contract period as extended under this paragraph.

14.4.2.7.8 The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the CONTRACTOR to complete all the Work pursuant to the Contract.

14.4.2.7.9 Upon completion of all items on the punch list, the CONTRACTOR may submit a payment request for all remaining retainage withheld by the CITY pursuant to this section. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the Contract, the CITY may continue to withhold up to 150 percent of the total costs to complete such items.

14.4.2.7.10 All items that require correction under the Contract and that are identified after the preparation and delivery of the list remain the obligation of the CONTRACTOR as defined by the Contract.

14.4.2.7.11 Warranty items or items not included in the list of items may not affect the final payment of retainage as provided in this section or as provided in the Contract between the CONTRACTOR and its subcontractors and suppliers.

14.4.2.7.12 Retainage may not be held by the CITY or the CONTRACTOR to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to the CITY or the CONTRACTOR for a Project or group of projects, and the final payment of retainage as provided in this section may not be delayed pending a final audit by the CITY's or CONTRACTOR's insurance provider.

14.4.2.8 If the CITY fails to comply with its responsibilities to develop the list required under 14.4.2.1.1 or 14.4.2.1.2 within the time limitations provided, the CONTRACTOR may submit a payment request for all remaining retainage withheld by the CITY pursuant to this section; and

payment of any remaining undisputed Contract amount, less any amount withheld pursuant to the Contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If the CITY has provided written notice to the CONTRACTOR specifying the failure of the CONTRACTOR to meet Contract requirements in the development of the list of items to be completed, the CITY need not pay or process any payment request for retainage if the CONTRACTOR has, in whole or in part, failed to

cooperate with the CITY in the development of the list or to perform its contractual responsibilities, if any, with regard to the development of the

list or if paragraph 14.6.1 applies.

14.5 Review of Applications:

14.5.1 CITY may refuse to make the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment previously made, to such extent as may be necessary in CITY'S opinion to protect CITY from loss because:

14.5.2 the Work is defective, or completed Work has been damaged, requiring correction or replacement;

14.5.3 the Contract Price has been reduced by Written Amendment or Change Orders;

14.5.4 CITY has been required to correct defective Work or complete Work in accordance with Section 00700.12.7; or

14.5.5 The CONTRACTOR fails to comply with the requirements for performance of the Work as stated in the Contract Documents.

14.6 Retainage.

14.6.1 With regard to any Contract for construction services, the CITY shall withhold from each progress payment made to the CONTRACTOR an amount not exceeding 5 percent of the payment as retainage until 50-percent completion of such services.

14.6.2 After 50-percent completion of the construction services purchased pursuant to the Contract, the CITY may, at it's own discretion, reduce to 3 percent the amount of retainage withheld from each subsequent progress payment made to the CONTRACTOR. For purposes of this subsection, the term "50- percent completion" has the meaning set forth in the Contract between the CITY and the CONTRACTOR or, if not defined in the Contract, the point at which the CITY has expended 50 percent of the total cost of the construction services purchased as identified in the Contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the Contract. However, notwithstanding this subsection, if the City has a population of 25,000 or fewer, the City may withhold retainage in an amount not exceeding 10 percent of each progress payment made to the CONTRACTOR until final completion and acceptance of the Project by the CITY.

14.6.3 After 50-percent completion of the construction services purchased pursuant to the Contract, the CONTRACTOR may elect to withhold retainage from payments to its subcontractors at a maximum of 5 percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the CONTRACTOR's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the CONTRACTOR's ability to rely on other safeguards. The CONTRACTOR shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the CONTRACTOR may not request the release of such retained funds from the CITY.

14.6.4 After 50-percent completion of the construction services purchased pursuant to the Contract, the CONTRACTOR may present to the CITY a payment request for up to one-half of the retainage held by the CITY. The CITY shall, at it's sole discretion, make payment to the CONTRACTOR, unless the CITY has grounds, pursuant to Section 14.6.6, for withholding the payment of retainage. If the CITY makes payment of retainage to the CONTRACTOR under this paragraph which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the CONTRACTOR shall timely remit payment of such retainage to those subcontractors and suppliers.

14.6.5 This section does not prohibit a CITY from withholding retainage at a rate less than 5 percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the Contract, or from releasing at any point all or a portion of any retainage withheld by the CITY which is attributable to the labor, services, or materials supplied by the CONTRACTOR or by one or more subcontractors or suppliers. If the CITY makes any payment of retainage to the CONTRACTOR which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the CONTRACTOR shall timely remit payment of such retainage to those subcontractors and suppliers.

14.6.6 This section does not require the CITY to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the CITY or CONTRACTOR.

14.6.7 The time limitations set forth in this section for payment of payment requests apply to any payment request for retainage made pursuant to

this section.

14.6.8 Sections 14.4.2.7.2 – 14.4.2.7.7 do not apply to construction services purchased by a CITY which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

14.6.9 This subsection does not apply to any construction services purchased by the CITY if the total cost of the construction services purchased as identified in the Contract is $200,000 or less.

14.7 Substantial Completion:

When CONTRACTOR considers the Work ready for its intended use, CONTRACTOR shall notify the CITY'S REPRESENTATIVE certifying in writing that the Construction is substantially complete (except for items specifically listed by CONTRACTOR as incomplete), submit to CITY all operation and maintenance manuals and instructions and spare parts required by the Contract Documents, and request that the CITY issue a certificate of Substantial Completion. Promptly thereafter, CITY, CONTRACTOR, and the CITY'S REPRESENTATIVE, with the ARCHITECT or ENGINEER, shall make an inspection of the Work to determine the status of completion. If the CITY'S REPRESENTATIVE does not consider the Work substantially complete, the CITY'S REPRESENTATIVE will notify CONTRACTOR in writing giving the reasons therefore. If CITY'S REPRESENTATIVE considers the Construction substantially complete, based on the recommendation of the ARCHITECT or ENGINEER, the CITY'S REPRESENTATIVE shall prepare a letter verifying the certificate of Substantial Completion, which shall fix the date of Substantial Completion.

14.8 Application for Payment:

After CONTRACTOR has completed all such corrections specified in Section 00700.14.10 to the satisfaction of the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT or ENGINEER, and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record Documents and other Documents, all as required by the Contract Documents, and after the CITY'S REPRESENTATIVE, upon the recommendation of the ARCHITECT or ENGINEER, has indicated that the Work is acceptable, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor,

services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR shall provide the City with a certified written explanation for why the subcontractor or supplier has not been paid. In addition, CONTRACTOR shall also submit with the final Application for Payment, the completed set of "As-Built" prints. Final payment to CONTRACTOR shall not be made until said prints have been reviewed and approved by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT or ENGINEER. Prior to approval, if necessary, the prints may be returned to CONTRACTOR for changes or modifications and if in the opinion of the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, they do not represent correct or accurate as-builts.

14.9 Final Payment and Acceptance:

14.9.1 If, on the basis of an inspection of the Work by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT or ENGINEER, during construction and final inspection, and review of the final Application for Payment and accompanying documentation by the CITY'S REPRESENTATIVE, all as required by the Contract Documents, the CITY'S REPRESENTATIVE is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, the CITY'S REPRESENTATIVE will, within ten (10) days after receipt of the final Application for Payment, indicate in writing a recommendation of payment and present the Application to City Manager for payment. Thereupon the CITY'S REPRESENTATIVE will give written notice to City Manager and CONTRACTOR that the Work is acceptable. Otherwise, the CITY'S REPRESENTATIVE will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

14.9.2 The CITY will be the interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.

14.9.3 Any moneys not paid by CITY when claimed to be due to CONTRACTOR under this Contract shall not be subject to interest,

including but not limited to pre- judgment interest.

14.10 CONTRACTOR'S Continuing Obligation:
CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the CITY'S REPRESENTATIVE, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT or ENGINEER, nor any correction of defective Work by CITY will constitute an acceptance of defective Work or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

14.11 Waiver of Claims:
The acceptance of final payment shall constitute a waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and as required by the Contract Documents, and still unsettled as of the date of final payment.

14.12 CITY May Suspend Work:
CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR, which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall not be allowed an increase in the Contract Price but may request an extension of the Contract Time, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in the Section 700.11 of the General Conditions.

14.13 CITY TERMINATION:

14.13.1 CITY shall have the right at any time, on not less than seven (7) days prior written notice to the CONTRACTOR, to terminate this Contract without cause or for CITY's convenience including, but not limited to termination in the event that the Project is abandoned by CITY; or the City Council terminates, suspends or modifies the Work. Upon receipt by the CONTRACTOR of such notice of termination (the "Date of Termination"), the CONTRACTOR shall immediately discontinue the Work and remove its equipment and employees from the Project location. In the event of termination under this section, the CONTRACTOR shall have the right, as its sole and exclusive remedy, to recover from CITY payment for Work performed and accepted by the CITY up to the Date of Termination (less any payment made to the CONTRACTOR by

CITY). In addition, without terminating this Contract as a whole, CITY may, for convenience, terminate a portion of this Contract (by reducing, in such manner as CITY deems appropriate, the scope of the Work to be performed by the CONTRACTOR). In which event such termination of a portion of this Contract shall be treated as a reduction in the scope of the Work, to which an equitable reduction shall be made to the Contract Price as evidenced by executed Change Order.

14.13.2 In addition to CITY's right to terminate this Contract immediately for any material breach or for default under the terms as specified in any other section of this Contract, if the CONTRACTOR shall fail to commence the Work in accordance with the provisions of this Contract, fail to perform the Work or portions thereof to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents, fail to use an adequate quantity or quality of personnel, equipment, or material to complete the Work within the Contract Time, fail to perform any of its obligations under the Contract Documents, be adjudged bankrupt, make a general assignment for the benefit of its creditors, permit a receiver to be appointed on account of its insolvency, otherwise insolvent, or fail to make prompt payments to its Subcontractors, materialmen or laborers, CITY shall provide the CONTRACTOR with written notice thereof, stating the nature of the default complained of. If CONTRACTOR does not cure such default within seven (7) days after receipt of such notice (or such longer period agreed to in writing by the parties if the nature of the default is such that it cannot be cured within seven (7) days and CONTRACTOR has commenced and is diligently proceeding to cure within the original seven (7) day period), the CITY shall have the right, on forty-eight (48) hours written notice thereof to the CONTRACTOR to terminate this Contract.

14.13.2.1 In the event of termination under this section, CITY shall notify the CONTRACTOR's surety, and the CONTRACTOR's surety shall take over and perform this Contract. The CONTRACTOR's surety shall continue to perform, on at least an interim basis, until such time as it makes other satisfactory arrangements for completion pursuant to the Bond obligations. If the CONTRACTOR's surety does not commence performance with adequate quantity and quality of personnel, equipment, and material to maintain the Contract Time, within five (5) days from the

date of receipt of such notice of termination, CITY may, without further notice to the CONTRACTOR or its surety, take possession of and use, without any rental obligation to the CONTRACTOR or any third party, all or any part of the CONTRACTOR's materials and other property of every kind used by the CONTRACTOR in the performance of the Work and use such property in the completion of the Work, and complete the Work with its own forces or by engaging the services of other parties therefore. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY under this Contract, the Bonds or otherwise. If after exercising any such remedy the cost to CITY of the performance of the balance of the Work is in excess of that part of the Contract Price which has not previously been paid to the CONTRACTOR hereunder, the CONTRACTOR and the CONTRACTOR's surety shall be liable for and shall reimburse CITY for such excess costs and all delay and damages suffered by CITY as a result thereof.

14.13.2.2 If after termination of this Contract under this section, it is determined that the CONTRACTOR was not in default or that sufficient cause to terminate under Section 14.13.2 did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CITY under Section 14.13.1, and that the CONTRACTOR agreed to CITY's use of its materials and other property, in which case the CONTRACTOR shall be entitled to be paid a reasonable sum for CITY's use of the Contractor's Materials or other property of the CONTRACTOR.

14.13.2.3 CITY may, if the CONTRACTOR neglects to perform the Work properly or to perform any provision of the Contract Documents, or does, or omits to do, anything whereby safety or proper construction may be endangered or whereby damage or injury may result to person or property, after forty-eight (48) hours written notice to the CONTRACTOR, without prejudice to any other remedy CITY may have, make good all Work, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the Contract Price due or which may thereafter become due the CONTRACTOR, but no action taken by CITY hereunder shall affect any of the other rights or remedies of CITY granted by this Contract or by law relieve the CONTRACTOR or the CONTRACTOR's surety from any consequences or liabilities arising

from such acts or omissions.

14.13.2.4 The rights and remedies of CITY under this Article 14 shall be non- exclusive, and shall be in addition to all the other remedies available to CITY at law or in equity.

14.13.3 In the event of a strike or stoppage of Work resulting from a dispute involving or affecting the labor employed by the CONTRACTOR or any of its Subcontractors, CITY may, at its option and without demand, terminate this Contract for default pursuant to Section 14.13.2.

14.14 Termination by CONTRACTOR for non-CITY Suspension:

If the Work should be suspended under an order of any court or other public authority for a period of more than ninety (90) days through no act or fault of CONTRACTOR or of anyone employed by him, then CONTRACTOR may, upon ten (10) days written notice to CITY and the CITY'S REPRESENTATIVE stop Work or terminate this Contract if the suspension is not lifted. If the CONTRACTOR terminates the contract under this section, the CONTRACTOR shall be entitled solely to payment for all Work executed and approved by the CITY through the date of termination. The CONTRACTOR may only recover actual expenses that the CONTRACTOR or his subcontractors have incurred prior to the date of termination. The provisions of this section shall not relieve CONTRACTOR of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with CITY.

14.15 CITY Suspension Beyond 90 Days:

If the Work should be stopped by order or request of the CITY for a period of more than ninety (90) days through no act or fault of the CONTRACTOR or anyone employed by him, then the CONTRACTOR shall be entitled to request a change order for the Contract Price and Contract Time in accordance with the procedures in Section 700.10. Any claim for additional time or price shall include documentation of non cancellable contractual obligations, and any other actual expense of the CONTRACTOR necessary for the CONTRACTOR to maintain compliance with the CONTRACT.

ARTICLE 15 – NOTICES & COMPUTATION OF TIME:

15.1 Giving Notice:

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon hand delivery, overnight delivery service (e.g. Federal Express) or by mailing by certified mail, return receipt requested to the following:

CONTRACTOR:

The business address of CONTRACTOR is:

Attention:

Phone: **Fax:**

CITY:
The business address of CITY is:

City of Marathon

9805 Overseas Highway

Marathon, FL 33050

Attention: Interim City Manager -Steve Williams

Phone: 305-743-0033 **Fax: 305-743-3667**

Copy to CITY ATTORNEY:
The business address of CITY ATTORNEY is:

Steven Williams

9805 Overseas Hwy, Marathon, FL 33050

ARTICLE 16 – BONDS AND INSURANCE:

16.1 Performance, Payment and Other Bonds:
Within ten (10) calendar days after issuance of Notice of Award, the CONTRACTOR shall execute and furnish to the CITY a performance bond and a payment bond on the forms provided by the CITY.

16.1.1 Two (2) separate bonds are required. The penal sum stated in each bond shall be the amount equal to 100% of the Contract Price payable under the Contract.

16.1.1.1 The Performance Bond shall guarantee the full and faithful

execution of the Work in an amount equal to 100 percent (100%) of the total Contract Price, and including guaranteed repair and maintenance of all defects due to faulty materials and workmanship that appear within one year after completion of the contract. The performance bond shall be conditioned that the CONTRACTOR perform the Work in the time and manner prescribed in the Contract Documents.

16.1.1.2 The Labor and Material Payment Bond shall guarantee the full and proper protection of all claimants supplying labor and materials in the Work in an amount equal to 100 percent (100%) percent of the total Contract Price. The payment bond shall be conditioned that CONTRACTOR promptly make payments to all persons who supply CONTRACTOR with labor, materials and supplies used directly or indirectly by CONTRACTOR in the prosecution of the Work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save and hold harmless CITY to the extent of any and all payments in connection with the carrying out of said Contract which CITY may be required to make under the law.

16.1.2 Qualification of Surety:

16.1.2.1 Each bond must be executed by a Surety company 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. Each Surety shall submit verification from the Florida Department of Financial Services stating the surety company's license and certificate of authorization to do business in the State of Florida.

16.1.2.2 The Surety company 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 in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 2, 1978 (31 CFR Section 223.10, Section 223.111). Further, the Surety company shall provide the CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner.

16.1.2.3 The CITY will accept a Surety bond from a company with a rating of

B+ or better for bonds up to $2 million, provided, however, that if any Surety company appears on the watch list that is published quarterly by Intercom of the Florida Department of Financial Services, the CITY shall review and either accept or reject the Surety company based on the financial information available to the CITY. A Surety company that is rejected by the CITY may be substituted by the Bidder with a Surety company acceptable to the CITY, only if the bid amount does not increase.

16.1.2.4 Bonds executed by an Attorney-in-Fact on behalf of the Surety, shall have affixed thereto a certified and current copy of Power of Attorney, indicating the monetary limit of such power.

16.1.3 More stringent requirements may be made by the CITY due to grants from other agencies and are set forth within the Supplementary Conditions, Section 00800, of the Contract Documents. If there are no more stringent requirements, the provisions of this Article shall apply.

16.2 Notification to Surety:

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Change Orders – additive or deductive, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change, and evidence of increased or decreased coverage provided to the CITY.

16.3 Duty to Substitute Surety:

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to CITY.

16.4 Insurance:

16.4.1 The CONTRACTOR shall provide or cause to be provided insurance of the type and on the terms and conditions as specified in **Exhibit "F"** attached hereto. The cost of this insurance is included in the Contract Price. The failure of the CONTRACTOR to provide such insurance shall be considered a material breach of the Contract. Insurance purchased by the CONTRACTOR shall be purchased from a carrier acceptable to CITY. Any decrease in the required insurance coverage requires the prior written approval of the City Manager.

16.4.2 CONTRACTOR shall maintain the coverages for insurance as required by

Exhibit "F" as set forth in this Section 00700.16.4 and thereafter during any and every period when CONTRACTOR or any of its Subconsultants or Subcontractors are performing any Work or furnishing any services pursuant to the Contract Documents. Upon execution of the Contract, ONTRACTOR shall provide or cause to be provided the workers' compensation insurance, comprehensive general liability insurance, business automobile insurance, professional liability insurance and the umbrella liability insurance policies. Immediately following the issuance of the Notice to Proceed for the Work, CONTRACTOR shall provide the builder's risk insurance policy; provided, however, no Work shall be performed unless and until the builder's risk insurancepolicy is provided to the CITY in accordance with this Section 700.16.4.

16.4.3 The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.

16.4.4 Certificates of Insurance shall be provided to the CITY at the time of execution of the Contract and certified copies provided if requested. Certificates of Insurance shall include the CITY as additional named insured. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CITY before any policy or coverage is cancelled or restricted.

16.4.5 The CONTRACTOR shall not commence work under the Contract until after he has obtained all of the minimum insurance herein described and submitted Certificates of Insurance to the CITY as herein required.

16.4.6 The CONTRACTOR agrees to perform the work under the Contract as an independent contractor, and not as a sub-contractor, agent or employee of CITY.

16.4.7 Violation of the terms of this Article and its sub-parts shall constitute a breach of the Contract and CITY, at its sole discretion, may cancel the Contract and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate.

16.4.8 CITY'S Liability and Insurance: CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, Subcontractors or others on the Work. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute Sections 768.28 and 95.11.

ARTICLE 17 – ASSIGNMENT:

17.1 CONTRACTOR shall not assign or transfer the Contract or its rights, title or

interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this section shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR without any further notice.

ARTICLE 18 – AUDIT/INSPECT:

18.1 CITY reserves the right to audit the records (pertaining to this project) of CONTRACTOR at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract. If an Auditor determines that the CONTRACTOR was paid for Work not performed or paid in excess of materials provided, the CONTRACTOR shall reimburse the CITY for such overpayment.

ARTICLE 19 – COMPUTATION OF TIME:

19.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

ARTICLE 20 – CUMULATIVE REMEDIES:

20.1 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this section will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

ARTICLE 21 – SURVIVAL OF OBLIGATIONS:

21.1 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final

payment, completion, and acceptance of the Work or termination or completion of the Contract.

ARTICLE 22 – CONTROLLING LAW:

22.1 The Laws of the State of Florida shall govern this Contract. ARTICLE 23 – ADVERTISING:

23.1 No advertising shall be permitted upon any part of the site or structures located on the site. News or press releases pertaining to the services, work product(s), or performance of CONTRACTOR under this Contract or the Project to which it relates shall be at the sole discretion of CITY.

Exhibit "A"

7802 Jean Blvd Ft Myers, Fl 33967

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY				
Change Orders approved in Previous months by Owner TOTAL			ADDITIONS	DEDUCTIONS
Approved this Month				
Number	Date Approved			
		TOTALS	$0.00	$0.00
Net change by Change Orders			$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due

CONTRACTOR

By:_____Date __

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents and the Contractor is entitled to payment of the AMOUNT CERTIFIED

CONTRACT DATE

Application is made for Payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached

1. ORIGINAL CONTRACT SUM		$ -
2. Net change by Change Orders		$0.00
3. CONTRACT SUM TO DATE		$ -
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)		$ -
5. RETAINAGE:		
a. 10% of Completed (Column D + E on G703)	$0.0	
b. 10% of Stored Material (Column F on G703)		
Total Retainage (Line 5a + 5b or Total in Column I of G703)		$0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)		$0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT		$0.00
8. CURRENT PAYMENT DUE		$0.00
9. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6)		$0.00

State of: Florida County of: Dade

Subscribed and sworn to before me this _____ day of _____ 2013

Notary Public

My Commission Expires:

AMOUNT CERTIFIED **$0.00**

(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT

By: Date

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

G703- 1983

AIA DOCUMENT G702 APPLICATION AND CERTIFICATE FOR PAYMENT • MAY 1983 EDITION • AIA • 1983
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

ENGINEER

APPLICATION FOR PAYMENT

INSTRUCTIONS

A. GENERAL INFORMATION

The sample form of Schedule of Values is intended as a guide only. Many projects require a more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by Engineer and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Contract permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage. Refer to Article 14 of the General Conditions for provisions concerning payments to Contractor.

B. COMPLETING THE FORM

The Schedule of Values, submitted and approved as provided in Section 00700.2.3 of the General Conditions, should be reproduced as appropriate in the space indicated on the Application for Payment form. Note that the cost of materials and equipment is often listed separately from the cost of installation. Also, note that each Unit Price is deemed to include Contractor's overhead and profit.

All Change Orders affecting the Contract Price should be identified and included in the Schedule of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

C. LEGAL REVIEW

All accompanying documentation of a legal nature, such as Lien waivers, should be reviewed by an attorney, and Engineer should so advise OWNER.

Exhibit "B"
CHANGE
ORDER

CHANGE ORDER NO._____

TO: City of Marathon

PROJECT: The Replacement of The 117th Street Bridge

CONTRACTOR:
DATE: _____

This Change Order will authorize the following change to the Agreement:

> The Work as set forth in the Agreement is hereby amended to include the items set forth on **Exhibit "1"** attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages, and/or time adjustments of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under the Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of $_under the Agreement will be [**unchanged**] [**changed**] by this Change Order, and (b) the schedule for performance of Work will be [**unchanged**] [**changed**] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

CONSENT OF SURETY TO CHANGE ORDER

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

_____
(Seal) Surety's Name and Corporate Seal

By: _____ Signature and Title

Attest: Signature and Title

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By: _____

By: _____

Exhibit
"C"
FIELD
ORDER

(CONTRACTOR)	(ENGINEER)
ENGINEER'S SUPPLEMENTAL INSTRUCTIONS/FIELD ORDER	INSTRUCTION/ORDER #
PROJECT NUMBER:	DATE OF ISSUANCE:
PROJECT:	
OWNER:	
THE WORK SHALL BE CARRIED OUT IN ACCORDANCE WITH THE FOLLOWING SUPPLEMENTAL INSTRUCTIONS ISSUED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS WITHOUT CHANGE IN CONTRACT SUM OR CONTRACT TIME. PRIOR TO PROCEEDING IN ACCORDANCE WITH THESE INSTRUCTIONS, INDICATE YOUR ACCEPTANCE OF THESE INSTRUCTIONS FOR MINOR CHANGE TO THE WORK AS CONSISTENT WITH THE CONTRACT DOCUMENTS AND RETURN A COPY TO THE ENGINEER. DESCRIPTION:	
ATTACHMENTS: (HERE INSERT LISTING OF DOCUMENTS THAT SUPPORT DESCRIPT	
ISSUED: CITY OF MARATHON BY: (CITY)	RECOMMENDED: BY: (ENGINEER)
ACCEPTED: BY: (CONTRACTOR)	

EXHIBIT "D"

Form of Work Directive Change

WORK DIRECTIVE CHANGE
No. _____

DATE OF ISSUANCE _____ EFFECTIVE DATE _____

OWNER _____
CONTRACTOR _____
Contract: _____
Project: Replacement of The 117th Street Bridge
OWNER's Contract No. _____
ENGINEER's Project No.

You are directed to proceed promptly with the following change(s): Description:

Purpose of Work Directive Change:

Attachments: (List documents supporting change)

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

☐ Unit
☐ Price
☐ s
Lump
Sum

Cost of the Work_____

Estimated increase (decrease) in Contract Price:
$_____
__.
If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:
Substantial Completion:
_____
days; Ready for final payment: _____
days.

RECOMMENDED:

_____
___
ENGINEER
By:

CITY

_____

AUTHORIZED:

_____
___
CITY
By:

_____

EXHIBIT "E"

Form of Assignment of Rights under Subcontractor

Contract ASSIGNMENT

TO: City of Marathon

CONTRACTOR:

PROJECT: Replacement of The 117th Street Bridge

CONSTRUCTION CONTRACT DATE:

ASSIGNMENT OF RIGHTS UNDER
SUBCONTRACTOR CONTRACT/SUBCONSULTANT CONTRACT

For and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, _____, whose mailing address is _____ _____(the "CONTRACTOR"), does hereby TRANSFER, ASSIGN and CONVEY unto the CITY OF MARATHON, a Florida municipal corporation, whose mailing address is 9805 Overseas Highway, Marathon, FL 33050 (the "CITY"), all of the rights, interests, benefits and privileges of the CONTRACTOR under (a) that certain Subcontractor Contract/Subconsultant Contract (the "Subcontract") dated ___20_, by and between the Contractor, and _____("the Subcontractor"), a copy of said Subcontract is attached hereto as Exhibit "A" and made a part hereof, providing for a portion of the construction services, labor or materials that the CONTRACTOR is obligated to provide the CITY under that certain Construction Contract (the "CONTRACT") dated _____, 20_, for the construction of a and related improvements known as _____, Marathon, FL 33050 Monroe County, Florida (the "Project"), and (b) any and all payment and performance bonds issued in conjunction with the Subcontract. However, the CITY does not hereby assume any of the CONTRACTOR'S liabilities, duties or obligations under the Subcontract.

The foregoing Assignment constitutes a part of the security given to the CITY by the CONTRACTOR to secure the CONTRACTOR'S performance of the CONTRACT. Notwithstanding anything in this instrument to the contrary, the CITY shall not exercise any rights under this instrument unless an event of default or other termination shall have occurred under the provisions of the CONTRACT. The CITY shall have the right, but not the duty, in the event of a default or termination pursuant to the terms of the CONTRACT, to exercise all of its rights, interests, benefits and privileges under the Subcontract.

Subcontractor hereby agrees with the CITY as follows:

That Subcontractor hereby consents to the foregoing assignment and agrees to notify the CITY in writing at the same time Subcontractor notifies the CONTRACTOR of the occurrence

of any failure of payment under the provisions of the Subcontract or of the occurrence of any other default by the CONTRACTOR under the provisions of the Subcontract.

That if the CITY notifies the Subcontractor in writing that an event of default by the CONTRACTOR, or other termination, has occurred under the CONTRACT, the Subcontractor shall, at the CITY'S request, waive the CONTRACTOR'S default and continue performance on the CITY'S behalf under the Subcontract in accordance with the terms thereof, provided that the Subcontractor shall be paid in accordance with the Subcontract for the following as and when they are due under the Subcontract:

(a) all services, work, labor and materials rendered on the CONTRACTOR'S behalf prior to the CITY'S request;

(b) all services, work, labor and materials rendered on the CITY'S behalf following the CITY'S request; and

(c) the amount of retainage, if any, withheld by the CITY from payments to the CONTRACTOR made by the CITY prior to the CITY'S request.

That in the event any of Subcontract proceeds are disbursed by the CITY directly to the Subcontractor, the Subcontractor will receive any such advances and will hold the same as a trust and for the purpose of paying the costs of the labor performed and equipment and supplies used in connection with the Project, and the Subcontractor will apply the same only to payment of such costs and for no other purpose.

That upon the CITY'S request, the Subcontractor shall furnish to the CITY a current list of all persons or firms with whom the Subcontractor has entered into subcontracts or other agreements relating to the performance of work or furnishing of materials in connection with the Project which have a value of $1,000 or more, together with a statement as to the status of each of such subcontracts or agreements and the respective amounts, if any, owed by the Subcontractor. The CONTRACTOR hereby consents to the furnishing to the CITY of such list and statement.

Subcontractor consents to the CITY assigning the CITY'S rights hereunder to anyone whom the CITY may choose to complete the CONTRACTOR'S obligations, including without limitation, the CONTRACTOR'S surety.

That the CITY has no obligation to exercise its rights under this Assignment and furthermore has no obligation to pay Subcontractor unless the CITY exercises its rights as set forth herein.

That this Assignment does not create third party beneficiary rights under the CONTRACT in favor of anyone, including Subcontractor.

IN WITNESS WHEREOF, this instrument shall be effective as of the date of the Subcontract.

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

STATE OF FLORIDA)
)
COUNTY OF MONROE)

This instrument was acknowledged before me this _day of _____20_by_, on behalf of THE CITY OF MARATHON, a Florida municipal corporation, who [ ] is personally know to me or [ ] produced _____as identification.

Notary Public: _____(name typed)

My Commission Expires: _____

EXHIBIT "F"

UPON EXECUTION OF THIS **AGREEMENT**, VENDOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE TO THE CITY EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT **CITY IS NAMED AS AN ADDITIONAL INSURED** WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS.

VENDOR shall file Certificates of Insurance with the City, reflecting evidence of all Coverages. All certificates of insurance must clearly identify the Contract to which they pertain, including a brief description of the subject matter of the Contract. They shall be filed with the City's Risk Manager within fourteen (14) days of the execution of this Agreement by both parties. The certificates of insurance shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for Coverage shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

All coverages shall be in force throughout the life of this Agreement. In the event insurance certificates provided to City indicate that any insurance shall terminate and lapse during the period of this Agreement and any and all amendments or extensions of it, then in that event, VENDOR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like Coverages for the remaining term of the Agreement and any and all extension of it, is in effect.

VENDOR shall procure and maintain at its own expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverages and minimum limits of liability. These limits of insurance coverage are the minimum, and may be subject increased if warranted by the scope of the project:

1.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law for Worker's Compensation, and the following limits for Employer Liability Insurance:

- $500,000 for bodily injury caused by an accident, each accident
- $500,000 for bodily injury caused by disease, each employee
- $500,000 for bodily injury caused by disease, policy limit

1.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than

$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

1.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than $2,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. The insurance certificate shall indicate "per occurrence."

1.4 The Contractor shall furnish Certificates of Insurance to the City, Naming the City and Florida Department of Transportation as additional insured, at the time of execution of this Agreement and certified copies provided to The City. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. If the insurance policies expire during the term of the contract, a renewal certificate shall be furnished to the City thirty (30) days prior to the renewal date.

LAP DIVISION 1 SPECIFICATIONS.
(REV 11-19-25) (FA 8-23-24) (FY 2026-27)

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 Programs Manual (525-010-300) and the Local Agency Program Checklist for Construction Contracts (Phase 58) – Federal and State Requirements (525-010-44)

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 their 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 their 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. The Specialty Engineer may also provide designs and details, repair designs and details, or perform Engineering Analyses for items of the permanent work declared by the State Construction Office to be "minor" or "non-structural".

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if they have 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 2 – PROPOSAL REQUIREMENTS AND CONDITIONS

2-1 Prequalification of Bidders.

Except as noted below, prequalify with the Department to be eligible to bid. The Department publishes regulations covering prequalification of Bidders under separate cover.

The Department does not require the Bidder to be a prequalified Contractor if bidding construction contracts of $250,000 or less, or if constructing buildings. In addition, at its sole discretion, the Department may waive prequalification requirements on contracts of $500,000 or less.

For construction contracts requiring prequalification, file an application for qualification using the Department's online prequalification application system, giving detailed information with respect to financial resources, equipment, past record, personnel, and experience. For qualified applicants, the Department will issue a certificate fixing the types of work and the aggregate amount of work that the Department allows the prequalified Bidder to have under contract at any one time.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following:

1. A bid on a Contract to provide any goods or services to a public entity.
2. A bid on a Contract with a public entity for the construction or repair of a public building or public work.
3. Bids on leases of real property to a public entity.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

All prequalified Contractors bidding on any Contract must certify their total dollar amount of Work Underway and submit Form 375-020-39 or a spreadsheet in a similar format prior to submitting a bid. This information must be submitted at least once during the month the bid is due via the "Work Underway" link in the Contractor Pre-Qualification System.

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 is defined as an increase 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:

Table 4-1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
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 4-1,

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" as published by EquipmentWatch, a division of Informa Business Media, Inc., 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 "Rental Rate 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.

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.

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.

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:

$$Ds = \frac{As \times C}{B}$$

Where As = Original Contract Amount minus Original Subcontract amounts(s)*

B = Original Contract Time
C = 8%
Ds = 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 Standard Plans.

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 mandatory workshop can only be eliminated if agreed to in writing by both the Contractor and Department. 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. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a Proposal. Deletions of work, approved by the Engineer which are not directly associated with or integral to a Proposal will be handled as full credits to the Department for the work deleted.

3. The Department shall have 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. This mandatory meeting can only be eliminated if agreed to in writing by both the Contractor and Department.

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, Standard Plans 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 their 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 Standard Plans, 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.

4-4 Unforeseeable Work.

When the Department requires work that is not covered by a price in the Contract and such work does not constitute a "Significant Change" as defined in 4-3.1, and the Department finds that such work is essential to the satisfactory completion of the Contract within its intended scope, the Department will make an adjustment to the Contract. The Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount.

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.

If the Contractor provides the written notice of intent, the preliminary request for time extension, and the request for Contract Time extension in compliance with the aforementioned time and content requirements, the Contractor's claim for delay to a controlling work item will be evaluated as of the date of the elimination of the delay even if the Contractor's performance subsequently overcomes the delay. If the claim for delay has not been settled, the Contractor must also comply with 5-12.3 and 5-12.9 to preserve the claim.

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 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 (including supervisory personnel) 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: https://www.fdot.gov/materials/administration/resources/library/publications/certifications/sampl

eforms.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 an application, available on the Department's website at the following URL:https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm. Applications must include the following documentation:

1. Supporting documentation as required by the Specifications, Standard Plans, and APL approval process. A sample may be requested to verify the product, in accordance with the specifications.
2. A photograph displaying the product as shipped with packaging.
3. A list displaying all components within the shipped packaging, if applicable.
4. Installation instructions and materials, if applicable.
5. Product packaging or product labels as required by the Specifications.
6. Construction material percentages and country source of materials.
7. Last two manufacturing steps and country of manufacture.
8. Manufacturer name and material designation (product name, product model/part number/style number, etc.) must be as identified on the product, product packaging, and product labels.
9. Applications must be signed by a legally responsible person employed by the manufacturer of the product.

Required test reports must be conducted by an independent laboratory or other independent testing facility. Required drawings and calculations must be signed and sealed by a Professional Engineer licensed in the State of Florida.

Products that have successfully completed the Department's evaluation process are eligible for inclusion 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, raw material, or manufacturing process modifications. Modification or alteration requests must be submitted along with supporting documentation that the product continues to meet Section 6, the Specification, or Standard Plans requirements. A product sample and additional product testing and documentation 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 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: https://www.fdot.gov/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 addenda 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, 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.

6-4.1 Engineering Analysis: 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 to the Engineer a proposed Engineering Analysis Scope to determine the disposition of the material. The Engineering Analysis Scope must contain at a minimum:

1. Description of the defective materials.

2. Supporting information, testing or inspection reports with nonconformities, pictures, drawings, and accurately dimensioned deficiency maps as necessary. For cracked elements, provide drawings showing the location, average width, depth, length, and termination points of each crack along the surfaces. Provide the distance from each termination point to a fixed reference point on the component, such as beam end or edge of flange.

3. Proposed approach of investigation and analysis.

4. Name and credentials of the proposed Specialty Engineer or Contractor's Engineer of Record who will perform the engineering analysis.

5. Proposed testing laboratories, qualified in accordance with Section 105-7.

Upon approval of the Engineering Analysis Scope by the Engineer, the Specialty Engineer or Contractor's Engineer of Record may perform the engineering analysis as defined in the approved scope and submit a signed and sealed Engineering Analysis Report (EAR) to the Engineer. The EAR must contain at a minimum:

1. The approved Engineering Analysis Scope.

2. Any investigations performed and the associated results obtained.

3. Analysis and conclusion.

4. Proposed disposition of the material, addressing the performance and durability of the proposed action.

Provide as appropriate:

1. Written evidence of a previously approved comparable deficiency and its repair.

2. Documented research demonstrating the effectiveness of the proposed repair.

3. Engineering calculations.

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 within 45 calendar days of the Engineer's approval of the Engineering Analysis Scope, complete and submit the EAR. The EAR must be signed and sealed by the Specialty Engineer or the Contractor's Engineer of Record that performed the engineering analysis. Allow for a 45 calendar day review period for all EARs associated with a category 2 bridge; tolling components identified in the current FDOT General Tolling Requirements (GTR) Part 3; and the tolling-related signing, DMS and ITS infrastructure. Allow for a 25 calendar day review period for all other items. The Engineer will determine the final disposition of the material after review of the EAR. 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: Comply with 2 CFR 184 and 2 CFR 200.322, which includes the Buy America Sourcing Preferences of the Build America, Buy America Act (BABA). Domestic compliance for all affected products will be listed on the APL. The list of affected articles, materials, and supplies that have been added to the APL and are not identified in each individual Section can be found at the following URL: https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm.

6-5.2.1 Steel and Iron: 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.

6-5.2.2 Manufactured Products: Use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers.

6-5.2.3 Construction Materials: Use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

6-5.2.4 Exemptions to Build America, Buy America: Temporary devices, equipment, and other items removed at or before the completion of the project are exempt from BABA funding eligibility requirements. Aggregates, cementitious materials, and aggregate binding agents or additives are exempted from BABA funding eligibility requirements.

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.

7-1.1 Compliance with FHWA 1273: The FHWA-1273 Electronic version, dated October 23, 2023 is posted on the Department's website at the following URL address: https://www.fdot.gov/specifications/specifications-references.
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 5B-64 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

7-1.4 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 Contract Documents or permits.

In addition, in cases where certain protected, threatened or endangered species are found or appear within close proximity to the project boundaries, the Department has established

guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address: https://www.fdot.gov/specifications/specifications-references.

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, the name of the property owner, and a person to contact to arrange a site inspection. Submit this notification at least 30 days in advance of planned commencement of the off-site activity, to allow for the Department to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event the Department's investigation determines a potential impact to a protected, threatened or endangered species and mitigation measures or permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities.

7-1.7 Insecticides, Herbicides and Fertilizers:

7-1.7.1 Insecticides and Herbicides: Use products found on the following website, https://www.npirs.org/state/ 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.

7-1.8 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, including the access route and the name of the property. It is the Contractor's responsibility to submit 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. Submit 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.

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.

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, including Department owned temporary bridges, 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.

4. Asphalt Milling Equipment:

a. In excess of 90,000 lbs crossing bridge structures.

b. Less than 90,000 lbs crossing bridge structures listed on the overweight routing map CRN-2 located on the Office of Maintenance Over-Weight Dimension Permits website at https://www.fdot.gov/maintenance/owod-permit-documents#BlanketAttachments.

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	County	Associated Work
FL20260238	Monroe	Highway Construction Project

Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed.

7-24 Disadvantaged Business Enterprise Program.

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."

7-24.4 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 jo275275int 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, the Contractor shall provide training aimed at developing full journeymen in a trade or job classification involved on all applicable roadway and bridge construction projects receiving federal funds.

The anticipated minimum number of trainees will be initially derived from construction contract calendar days and dollar value as represented within the provided Table 7-1. A final training goal will be determined at the Training Evaluation Meeting based upon the Department's consideration of all relevant factors including qualitative evidence in the form of contractor efforts to advance equal employment opportunity beyond mere compliance with legal

obligations; the availability of eligible trainees; potential for effective training; contractor workforce; project location; type of work and work items; and contractor participation in other approved training or workforce development programs.

No trainees will be required for Federal-aid Contracts administered with a Contract Time allowance of less than 275 calendar days. When the Contract Time allowance is 275 calendar days or more, the estimated required number of trainees shown in Table 7-1, with all other relevant factors, be the basis in determining totals. The ability of the contractor to successfully achieve completion of required training goals is desired. From consideration of all criteria presented during the Training Evaluation Meeting, the District Contract Compliance Manager may adjust the minimum number of trainees regarding those totals.

Table 7-1	
Estimated Contract Values	Anticipated Required Trainees
$3,500,000 or less	0
Over $3,500,000 to $7,500,000	2
Over $7,500,000 to $12,000,000	3
Over $12,000,000 to $20,000,000	4
Over $20,000,000 to $30,000,000	6
Over $30,000,000 to $40,000,000	8
Over $40,000,000 to $60,000,000	10
Over $60,000,000 to $75,000,000	12
Over $75,000,000 to $90,000,000	14
Over $90,000,000 to $100,000,000	15
Over $100,000,000 to $125,000,000	17
Over $125,000,000 to $150,000,000	20
Over $150,000,000 to $175,000,000	22
Over $175,000,000 to $200,000,000	25
Over $200,000,000* One additional trainee per $10,000,000 additional Construction Contract amount	

Training and upgrading of minority, nonminority, women, and economically disadvantaged persons toward journeyman status is a primary objective of this Section. Accordingly, by conducting systematic and direct recruitment through public and private sources likely to yield minorities and women trainees the Contractor shall make every effort to enroll candidates to the extent such individuals are located and available within a reasonable area of recruitment. This training is not intended, and shall not be used, to discriminate against any applicant or prevent access of, whether minority, nonminority, woman, or persons believed economically disadvantaged.

The intent of these provisions is to provide training in construction crafts rather than clerical 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 or General Laborer, may be permitted provided that significant and meaningful training plan is provided and approved by the District Contract Compliance Manager. Training as a Helper for any position, Rodman/Chainman, and Timekeeper classifications will not be approved for the On-The-Job Training Program.

The Contractor may incorporate the requirements of this Section, including responsibility for training a portion of trainees, in any such subcontract maintaining continued primary responsibility and satisfaction of requirements imposed by this Section.

The Department and the Contractor shall establish a training program which is tied to construction scope of work, length of operations, and satisfy all equal employment opportunity obligations of the Contractor. Other additionally recognized apprenticeship or training programs may be considered acceptable provided those are being administered in a manner consistent with the equal employment obligations of Federal-aid Highway Construction Contracts. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work with classifications covered by such programs.

The Department and Contractor shall determine the training goal, classification types and minimum total hours needed during the Trainee Evaluation Meeting. An On-the-Job Training Schedule indicating number of training candidates and appropriate Proficiency Standards for each classification must be submitted by the Contractor within ten days after the meeting for approval by the Department.

This schedule may be subject to change and a revised schedule shall be submitted for approval by the Department if any of the following occur:

1. Start date on the approved On-The-Job Training Schedule or Plan has been missed by 14 or more days.
2. Start date on the approved On-The-Job Training Schedule or Plan is accelerated to commence earlier than 14 or more days.
3. A change in previously approved classifications.
4. Replacement trainees are added due to voluntary or involuntary termination.

The Contractor is responsible for identifying qualified candidates for enrollment and feasibly 25% of trainees in each occupation are in their first year of training. To ensure eligibility, the Contractor should include 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 Department will gather additional information regarding the proposed Candidates' previous work experience, training, as well as understanding of the On-the-Job Program and Proficiency Standards established for the classification.

The Trainee Enrollment and Notification of Personnel Action form is to be submitted fourteen days prior to the requested enrollment date. To be considered for enrollment, the proposed trainee candidate must meet the following criteria:

1. The candidate did not successfully complete a training course leading to journeyman status for the proposed classification.
2. The candidate did not gain sufficient experience by working in the proposed classification.
3. The candidate was not hired as a journeyman in the proposed classification.
4. The candidate is not currently enrolled in the On-the-Job Program.

The Contractor shall compensate the trainee at no less than the laborer rate established in the Contract at the commencement 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 graduate works in the classification in which they were trained.

If an economically disadvantaged non-minority person is enrolled, such action shall be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department. The Contractor will be responsible for, and provided an opportunity to identify

actions and steps taken in pursuance thereof, prior to a determination of compliance with this Section being assessed the Contractor.

The Contractor may only enroll a trainee in one active classification per instance prior to approval of an additional classification for that trainee on the same project unless approved by the District Contract Compliance Manager. At beginning of training, the Contractor shall furnish the trainee a copy of the scheduled program they will follow during the intended training period and upon completion, award certification indicating type and total hours satisfactorily achieved.

To complete training, the transfer of trainees from project to project and from district to district is permitted. This includes transfers between multiple projects which could include non-FDOT government projects (City, County, etc.) provided there is the existence of an agreement to monitor the OJT Trainees in accordance with the OJT Program with the contractor, FDOT and other participating agencies. A trainee is only allowed to be enrolled on the original project.

The Contractor shall generate, maintain and furnish the District Contract Compliance Manager with the Monthly Time Report reflecting known training hours apart from other work hours performed by each individual trainee as part of this Contract. The report shall be submitted no later than the tenth day of the subsequent month and identify proficiency occurring.

Graduation to journeyman status will be based upon satisfactory accomplishment of:

1. Proficiency Demonstration being achieved upon conclusion of training as established for the specific training classification.

2. Completion of the minimum hours in a training classification range.

3. The employer's satisfaction that the trainee does meet journeyman status in the classification of training.

The Contractor shall furnish the following documentation to the Department within seven days of successfully demonstrating proficiency:

1. Trainee Enrollment and Notification of Personnel Action form.

2. Proficiency Demonstration Verification Form signed by representatives of both the Contractor and the Department as well as the trainee indicating successful completion of each Proficiency Standard established for the classification.

The Contractor shall submit to the Department a copy of the Trainee Enrollment and Notification of Personnel Action form no later than seven days after the effective date when the candidate is voluntarily or involuntarily terminated from the program.

When approved in advance, the Department provides the Contractor the opportunity to participate in "Voluntary On-the-Job Training Program for Banking". Banking Certificates will be issued when the Contractor desires to preserve credit for a trainee. Further, if the Contractor or subcontractor requests to utilize banked trainees, the Banking Certificate will be validated allowing credit to the Contractor on a subsequent Federal-Aid Project. Banked credits of Prime Contractors working as Subcontractors may be accepted for credit. Voluntary On-the-Job Training Program for Banking can be considered under the following circumstances:

1. Federal-aid Projects – Banking Certificates are issued for training of persons in excess of the required number of candidates based on the awarded Contract amount less items of work for which no training can be afforded.

2. State Funded Projects - the Contractor will have the option to train employees on project for which On-the-Job Training Program mandates do not apply. However, the request to participate must be evaluated and will be considered if adequate Department staff are available to monitor compliance with the training criteria.

The following criteria will be used in determining if the Contractor has complied with the requirements of this specification:

1. Credit will be allowed for each trainee who satisfactorily completes training for the classification in which the trainee is enrolled.

2. Credit will be allowed for each trainee who continues training in the same job classification and who completes their training on a different contract.

3. Credit will be allowed for a trainee who is given the greatest practical amount of training on the contract; however, the trainee is unable to complete the training due to insufficient amount of work available in the classification.

4. Credit will be allowed for any position indicated in the approved On-the-Job Training Schedule or Plan, for which the Contractor can demonstrate that a good faith effort was made to provide training.

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.

6. Banking certificates may be redeemed within five (5) years of issuance. The issuance and redemption of banking certificates are tracked by each District and the EEO.

7. Earned banking credits are redeemed by presenting the original banking certificate to the DCCM of the district where the project on which the credit is to be applied.

8. A contractor utilizing banking credit(s) to fulfill agreed upon trainee requirement(s), must present the original banking certificate for redemption. If the contractor has determined at the TEM that banked credits will be used to meet trainee requirements, then the certificate(s) is submitted with the initial training schedule. A prime contractor working as a subcontractor to another prime, may redeem their earned banking certificates for the prime.

9. If the contractor subsequently determines to use banked credit(s) to meet trainee requirements, then the certificate(s) are submitted with the revised training schedule.

The Contractor will have fulfilled the responsibilities of this Specification when acceptable training has been provided to the trainee as specified above.

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.

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.

8-3.2 Submission of Contract Schedule: Within 21 calendar days after Contract award or at the preconstruction conference, whichever is earlier, submit to the Engineer a Contract Schedule for the project. The Engineer will review and respond to the Contractor within 15 calendar days of receipt.

Provide a Contract Schedule that shows the various activities of work in sufficient detail to demonstrate a reasonable and workable plan to complete the project within the Contract Time. Show the order and interdependence of activities and the sequence for accomplishing the work. Describe all activities in sufficient detail so that the Engineer can readily identify the work and measure the progress of each activity. Show each activity with a beginning work date and a duration. Include activities for procurement fabrication, and delivery of materials, plant, and equipment, and review time for shop drawings and submittals. Include milestone activities when milestones are required by the Contract Documents. In a project with more than one phase, adequately identify each phase and its completion date, and do not allow activities to span more than one phase.

Conduct sufficient liaison and provide sufficient information to indicate coordination activities with utility owners that have facilities within the limits of construction have been resolved. Incorporate in the Contract Schedule any utility work schedules included in the Contract Documents unless the utility company and the Department mutually agree to changes to the utility schedules shown in the Contract.

Submit a working plan with the Contract Schedule, consisting of a concise written description of the construction plan.

The Engineer will return inadequate Contract Schedules to the Contractor for corrections. Resubmit a corrected schedule within 15 calendar days from the date of the Engineer's return transmittal.

Submit an updated Contract Schedule, for Engineer's acceptance, if there is a significant change in the planned order or duration of an activity. The Engineer will review the corrected schedule and respond within 7 calendar days of receipt.

By acceptance of the Contract Schedule, the Engineer does not endorse or otherwise certify the validity or accuracy of the activity durations or sequencing of activities.

The Engineer will use the accepted schedule as the baseline against which to measure the progress.

If the Contractor fails to finalize either the initial or a revised Contract Schedule in the time specified, the Engineer may withhold all Contract payments until the Engineer accepts the schedule.

The Contract Schedule may indicate a completion date in advance of the expiration of Contract Time. However, the Department will not be liable in any way for the Contractor's failure to complete the project prior to expiration of Contract Time. Any additional costs, including extended overhead incurred between the Contractor's scheduled completion date and the expiration of Contract Time, shall be the responsibility of the Contractor. The Contractor shall not be entitled to claim or recover any such costs from the Department.

8-5 Qualifications of Contractor's Personnel.

Provide competent, careful, and reliable superintendents, foremen, and workers. Provide workers with sufficient skill and experience to properly perform the work assigned to them. Provide workers engaged on special work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Provide workers that shall make due and proper effort to execute the work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.

It is prohibited as a conflict of interest for a Contractor to subcontract with a Consultant to perform Contractor Quality Control when the Consultant is under contract with the Department to perform work on any project described in the Contractor's Contract with the Department. Prior to approving a Consultant for Contractor Quality Control, the Contractor shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists.

Whenever the Engineer determines that any person employed by the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate, the Engineer will provide written notice and the Contractor shall discharge the person from the work. Do not employ any discharged person on the project without the written consent of the Engineer. If the Contractor fails to remove such person or persons, the Engineer may withhold all estimates that are or may become due, or suspend the work until the Contractor complies with such orders. Protect, defend, indemnify, and hold the Department, its agents, officials, and employees harmless from all claims, actions, or suite arising from such removal, discharge, or suspension of employees.

8-7.3 Adjusting Contract Time:

8-7.3.1 Increased Work: The Department may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new work items, or provides for unforeseen work. The Department will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the additional designated work delays the Contract completion schedule.

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 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.

When the Department grants a time extension due to rains or other inclement weather, the Contractor shall submit any objection to the additional time in writing within ten calendar days from receipt of written notice from the Engineer. Failure to submit a written appeal within ten calendar days from receipt of the written notice shall constitute a waiver of any and all rights to appeal the Department's decision at a later time.

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 they 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 affect 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.

The Department will consider requests for time extension due to delay in work operations within the limits of the railroad right-of-way, the adjoining 15 feet, or determined by the Railroad or Department to be able to potentially foul the tracks regardless of distance from railroad right-of-way on job progress as the basis for granting a time extension only if all the following criteria are met:

1. Delays are due to a lack of availability of Railroad protective services as required by 7-11.4.

2. Work within the limits of the railroad right-of-way or the adjoining 15 feet actually impacted progress toward completion of controlling work items.

3. The Contractor took all reasonable measures to minimize the effect of work operations within the limits of the railroad right-of-way or the adjoining 15 feet on job progress, including compliance with all provisions of 7-11.4 and 5-12, and cooperative scheduling of the Contractor's operations.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

A preliminary request for an extension of Contract Time must be submitted in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay. In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay.

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) 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
$299,999 and under	$1,318
$300,000 but less than $2,000,000	$1,609
$2,000,000 but less than $5,000,000	$2,529
$5,000,000 but less than $10,000,000	$3,498
$10,000,000 but less than $20,000,000	$4,752
$20,000,000 but less than $40,000,000	$6,703
$40,000,000 and over	$11,171 plus 0.00005 of any amount over $40 million (Round to nearest whole dollar)

The Engineer may approve adjustments to the liquidated damages amounts in accordance with the Construction Project Administration Manual (CPAM) provided all contract work is complete.

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 1. or 2. below:

1. a difference between the original plan quantity and final quantity of more than 5%,

2. a change in quantity which causes a change in the amount payable of more than $10,000.

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.

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. **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 they fail 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.

9-5.5 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, ITS and signal components, and precast prestressed 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.