

ATTACHMENT A



CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract is made and entered into this _____ day of _____ 2023 by and between CITY OF MILTON, FLORIDA (“CITY”), a political subdivision of the State of Florida, located at 6738 Dixon Street, Milton, Florida 32570, and _____, whose principal place of business is at _____ (the “Consultant”), whose Federal I.D. number is _____, in connection with City Request for Proposal No. _____ and the professional services set forth therein.

WITNESSETH

WHEREAS, the City has pursued the professional services selection process contemplated under section 287.055, Florida Statutes; and

WHEREAS, City desires to obtain the professional consulting services of the Consultant concerning said services being more fully described in the exhibits attached to this Contract.

NOW, THEREFORE, in consideration of the mutual promises herein, the City and the Consultant agree as follows:

ARTICLE ONE CONSULTANT’S RESPONSIBILITY

1.1. Consultant shall provide to City continuing professional engineering consulting services for the duration of the Contract.

1.2. The Services required under this Contract to be performed by Consultant shall be those set forth in Article Two and Contract Manuel as Exhibit A and shall be issued periodically as Notice to Proceeds. The basis of compensation to be paid Consultant by the City for Services is set forth in Article Five and Schedule A, “Basis of Compensation” attached to each Notice to Proceed, which is attached hereto and incorporated herein. Work Authorization requests will be made to Consultant as may be warranted, including but not limited to updates of plans, designs of improvements, field and construction services, acquisition analysis, and permitting activities as may be reasonably contemplated hereunder.

1.3. The Consultant agrees to obtain and maintain throughout the period of this Contract all such licenses as are required to do business in the State of Florida, including, but not limited to,

ATTACHMENT A

all licenses required by the respective state boards, and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Contract.

1.4. The Consultant agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.5. Consultant agrees that the Project Manager for the term of this Contract shall be:

INSERT NAME

The Consultant agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the Consultant hereunder. The person selected by the Consultant to serve as the Project Manager shall be subject to the prior approval and acceptance of the City, such approval or acceptance shall not be unreasonably withheld.

1.6. Consultant agrees, within fourteen (14) calendar days of receipt of a written request from the City, to promptly remove and replace from the project team the Project Manager, or any other personnel employed or retained by the Consultant, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by the Consultant to provide and perform services or work pursuant to the requirements of this Contract, whom the City shall request in writing to be removed, which request may be made by the City with or without cause.

1.7. The Consultant has represented to the City that it has expertise in the type of professional services that will be required for the Project. The Consultant agrees that all services to be provided by Consultant pursuant to this Contract shall be subject to the City's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by Consultant hereunder. In the event of any conflicts in these requirements, the Consultant shall notify the City of such conflict and utilize its best professional judgment to advise City regarding resolution of the conflict.

1.8. Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, without City's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

ATTACHMENT A

1.9. Evaluations of the City's adopted capital improvement budget, preliminary estimates of construction cost and detailed estimates of construction cost prepared by the Consultant represent the Consultant's best judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that bids or negotiated prices will not vary from any estimate of construction cost or evaluation prepared or agreed to by the Consultant. Notwithstanding anything above to the contrary, Consultant shall revise and modify Construction Documents and assist in the rebidding of the work at no additional cost to City, if all responsive and responsible bids exceed the estimates of construction costs prepared by Consultant.

1.10. Consultant shall not be responsible for means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors.

ARTICLE TWO SERVICES OF CONSULTANT

2.1. As authorized or required by the City in a Notice to Proceed, and agreed to by Consultant, Consultant shall furnish or obtain from other Services of the types listed in the Proposal submitted date, attached as **Exhibit B**. These services will be paid for by the City as indicated in Article Five and Schedule A and as confirmed in each Notice to Proceed.

ARTICLE THREE CITY'S RESPONSIBILITIES

3.1. The City shall designate in writing a representative to act as City's representative with respect to the services to be rendered under this Contract (hereinafter referred to as the "City's Representative"). The City's Representative shall have City transmit instructions, receive information, interpret and define City's policies and decisions with respect to Consultant's services for the Project. However, the City's Representative is not authorized to issue any verbal or written orders or instructions to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- a. The scope of services to be provided and performed by the Consultant hereunder;
- b. The time the Consultant is obligated to commence and complete all such services;
or
- c. The amount of compensation the City is obligated or committed to pay the Consultant.

3.2. The City's Representative shall:

- a. Review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed in accordance with this Contract;

ATTACHMENT A

- b. Provide all criteria and information requested by Consultant as to City's requirements, for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
 - c. Upon request from Consultant, assist Consultant by placing at Consultant's disposal all available information in the City's possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction of the Project;
 - d. Arrange for access to and make all provisions for Consultant to enter the Project site to perform the services to be provided by Consultant under this Contract; and
 - e. Provide notice to Consultant of any deficiencies or defects discovered by the City with respect to the services to be rendered by Consultant hereunder.
- 3.3. Consultant acknowledges that access to the Project Site, to be arranged by City for Consultant, may be provided during times that are not the normal business hours of the Consultant.
- 3.4. City shall be responsible for the acquisition of all easements, property sites, rights-of-way, or other property rights required for the Project and for the costs thereof, including the costs of any required land surveys in connection with such acquisition.
- 3.5. For the purposes of this Contract, the City's Representative shall be:

Randy Jorgenson, City Manager

ARTICLE FOUR TIME

- 4.1. Services to be rendered by Consultant shall be commenced subsequent to the execution of any Notice to Proceeds issued pursuant to this Contract, after receiving written Notice to Proceed from City for all or any designated portion of the Project and shall be performed and completed in accordance with the Project Schedule attached to the Notice to Proceed for the Project.
- 4.2. Should Consultant be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Consultant, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the City, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Consultant shall notify City in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Consultant may have had to request a time extension.

ATTACHMENT A

4.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Consultant's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Consultant of its duty to perform or give rise to any right to damages or additional compensation from City. Consultant's sole remedy against City will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the Consultant, the services to be provided hereunder have not been completed within the schedule identified in the Notice to Proceed, the Consultant's compensation shall be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by Consultant.

4.4. Should the Consultant fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the City hereunder, the City at its sole discretion and option may withhold any and all payments due and owing to the Consultant until such time as the Consultant resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the City's satisfaction that the Consultant's performance is or will shortly be back on schedule.

ARTICLE FIVE COMPENSATION

5.1. Compensation and the manner of payment of such compensation by the City for services rendered hereunder by Consultant shall be as prescribed in Schedule A, entitled "Basis of Compensation," and **Exhibit C** which are attached hereto and made a part hereof.

5.2. The total amount to be paid by the City under this Contract for all services and materials, including "out of pocket" expenses and any approved subcontracts, shall not exceed the amount set forth in the approved Notice to Proceeds without prior approval of the City. The Consultant shall notify the City's Representative in writing when 90% of the "not to exceed amount" has been reached.

5.3. Invoices received by the City from the Consultant pursuant to this Contract will be reviewed and approved in writing by the City's Representative, who shall indicate whether services have been rendered in conformity with the Contract, and then sent to the City's Office of Management and Budget for processing payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within thirty (30) days following the City Representative's approval, who shall process all payments in accordance with the Florida Prompt Payment Act or advise Consultant in writing of reasons for not processing same. In addition to detailed invoices, upon request of the City's Representative, Consultant will provide City with detailed periodic Status Reports on the project.

5.4. "Out-of-pocket" expenses shall be reimbursed in accordance with Florida law and Schedule A. All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the City's Representative. Such documentation shall be sufficient to

ATTACHMENT A

establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract.

5.5. In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the City for each Notice to Proceed. This final invoice shall also certify that all services provided by Consultant have been performed in accordance with the applicable Notice to Proceed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not included on this final invoice are waived by the Consultant. Acceptance of final payment by Consultant shall constitute a waiver of all claims and liens against City for additional payment.

ARTICLE SIX WAIVER OF CLAIMS

6.1. Consultant's acceptance of final payment shall constitute a full waiver of any and all claims related to the obligation of payment by it against City arising out of this Contract or otherwise related to the Project, except those previously made in writing and identified by Consultant as unsettled at the time of the final payment. Neither the acceptance of Consultant's services nor payment by City shall be deemed to be a waiver of any of City's rights against Consultant.

ARTICLE SEVEN TRUTH IN NEGOTIATION REPRESENTATIONS

7.1. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Contract and that Consultant has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract.

7.2. In accordance with provisions of Section 287.055(5)(a), Florida Statutes, the signature of this Contract by the Consultant shall also act as the execution of a truth in negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Consultant's most favored customer for the same or substantially similar service. Should the City determine that said rates and costs were significantly increased due to incomplete, noncurrent or inaccurate representation, then said rates and compensation provided for in this Contract shall be adjusted accordingly.

ARTICLE EIGHT TERMINATION OR SUSPENSION

8.1. Consultant shall be considered in material default of this Contract and such default will be considered cause for City to terminate this Contract, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Contract within

ATTACHMENT A

a reasonable time after issuance of the Notice(s) to Proceed of a Notice to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by City pursuant to this Contract, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant or by any of Consultant's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Contract, or (f) for any other just cause. The City may so terminate this Contract, in whole or in part, by giving the Consultant seven (7) calendar days' written notice.

8.2. If, after notice of termination of this Contract as provided for in paragraph 8.1 above, it is determined for any reason that Consultant was not, in default, or that its default was excusable, or that City otherwise was not entitled to the remedy against Consultant provided for in paragraph 8.1, then the notice of termination given pursuant to paragraph 8.1 shall be deemed to be the notice of termination provided for in paragraph 8.3 below and Consultant's remedies against City shall be the same as and limited to those afforded Consultant under paragraph 8.3 below.

8.3. City shall have the right to terminate this Contract, in whole or in part, without cause upon seven (7) calendar days' written notice to Consultant. In the event of such termination for convenience, Consultant's recovery against City shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Consultant that are directly attributable to the termination, but Consultant shall not be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profits on work not required to be performed.

8.4. Upon termination, the Consultant shall deliver to the City all original papers, records, documents, drawings, models, and other material set forth and described in this Contract.

8.5. The City shall have the power to suspend all or any portions of the services to be provided by Consultant hereunder upon giving Consultant two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the Consultant's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

ARTICLE NINE PERSONNEL

9.1. The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the City shall be that of an Independent Contractor and not as employees or agents of the City.

ATTACHMENT A

9.2. The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to any benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

9.3. All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

9.4. Any changes or substitutions in the Consultant's key personnel, as may be listed in Consultant's statement of qualifications, must be made known to the City's Representative and written approval must be granted by the City's Representative before said change or substitution can become effective, said approval for which shall not unreasonably be withheld.

9.5. The Consultant warrants that all services shall be performed by skilled and competent personnel to professional standards applicable to firms of similar local and national reputation.

9.6. The Consultant warrants that it fully complies with all Federal Executive Orders, statutes and regulations regarding the employment of undocumented workers and others and that all employees performing work under this Agreement meet the citizenship or immigration status requirements set forth in Federal Executive Orders, statutes and regulations. Consultant shall indemnify, defend and hold harmless the City, its officers and employees from and against any sanctions and any other liability which may be assessed against the Contractor in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

9.7. The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

ARTICLE TEN SUBCONTRACTING

10.1. Consultant shall not subcontract any services or work to be provided to City without the prior written approval of the City's Representative. The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The City's acceptance of a subcontractor shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE ELEVEN FEDERAL AND STATE TAX

ATTACHMENT A

11.1. The City is exempt from payment of Florida state sales and use taxes. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's tax exemption number in securing such materials.

11.2. The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE TWELVE OWNERSHIP OF DOCUMENTS

12.1. Upon completion or termination of this Contract, all records, documents, tracings, plans, specifications, maps, evaluations, reports, computer assisted design or drafting disks and other technical data, other than working papers, prepared or developed by Consultant under this Contract shall be delivered to and become the property of City. Consultant, at its own expense, may retain copies for its files and internal use.

12.2. The City and the Consultant shall comply with the provisions of Chapter 119, Florida Statutes, pertaining to public records. Consultant assumes no liability for the use of such documents by the City or others for purposes not intended under this Contract.

ARTICLE THIRTEEN MAINTENANCE OF RECORDS & PUBLIC RECORDS

13.1. Consultant will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by Consultant for a minimum of three (3) years from the date of termination of this Contract or the date the Project is completed, whichever is later. City, or any duly authorized agents or representatives of City, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Contract and during the three (3) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

13.2. Contractor must comply with the public records laws, Florida Statute chapter 119, specifically Contractor must:

- a) Keep and maintain public records required by the City to perform the service.
- b) Upon request from the City's custodian of public records, 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.
- c) 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.
- d) 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

ATTACHMENT A

perform the service. If the contractor transfers all public records to the public agency 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 the public records. All records stored electronically must be provided to the public agency, upon the request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITYCLERK@MiltonFL.ORG.

13.3. The City reserves the right to unilaterally cancel this Contract for refusal by the Contractor or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Contract unless the records are exempt.

ARTICLE FOURTEEN INSURANCE

14.1. During the life of the Contract the Consultant shall provide, pay for, and maintain, with companies satisfactory to the City, the types of insurance as set forth in attached **Exhibit D**.

ARTICLE FIFTEEN INDEMNIFICATION

15.1. The Consultant shall indemnify and hold harmless the City, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the Contract.

15.2. Consultant acknowledges that the general conditions of any construction contract shall include language, satisfactory to the City's attorney, in which the contractor agrees to hold harmless and to defend City, Consultant, their agents and employees, from all suits and actions, including attorney's fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of the construction contract or work performed thereunder. City acknowledges that Consultant shall be expressly named as an indemnified party, and shall be held harmless, in the general conditions of any construction contract, and shall be named as an additional insured in any contractor's insurance policies.

15.3. The first ten dollars (\$10.00) of remuneration paid to Consultant under this Contract shall be in consideration for the indemnification provided for in this section.

ATTACHMENT A

Consultant under this Contract shall be in consideration for the indemnification provided for in this section.

ARTICLE SIXTEEN SUCCESSORS AND ASSIGNS

16.1. The City and the Consultant each binds itself and its successors, executors, administrators and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the City nor the Consultant shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Consultant.

ARTICLE SEVENTEEN REMEDIES

17.1. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract shall be held in Santa Rosa County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE EIGHTEEN CONFLICT OF INTEREST

18.1. The Consultant represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The Consultant further represents that no person having any interest shall be employed for said performance.

18.2. The Consultant shall promptly notify the City Representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an informed determination from the City Representative as to whether the association, interest or circumstance would be viewed by the City Representative as constituting a conflict of interest if entered into by the Consultant. The City Representative agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notice by the Consultant. Such determination may be appealed to the City Council by the Consultant within thirty (30) days of the City Representative's notice to the Consultant. If, in the opinion of the City Representative or City, the prospective business association, interest or

ATTACHMENT A

circumstance would not constitute a conflict of interest by the Consultant, the City Representative or City shall so state in the notice and the Consultant shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Consultant under the terms of this Contract.

ARTICLE NINETEEN DEBT

19.1. The Consultant shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE TWENTY NONDISCRIMINATION

20.1. The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation. Including those set forth in **Exhibit E** hereto and incorporated herein by reference (TITLE VI).

20.2. Additionally, (As per Executive Order 11246) Contractor may not discriminate against any employee or applicant for employment because of age, race, color, creed, sex, disability or national origin. Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, race, color, creed, sex, disability or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

ARTICLE TWENTY-ONE SPECIAL CONDITIONS

21.1. The consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision, attached as **Exhibit F**, binds the Consultant and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

ARTICLE TWENTY-TWO ENFORCEMENT COSTS

22.1. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not

ATTACHMENT A

taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE TWENTY-THREE NOTICE

23.1. All notices required in this Contract shall be sent by certified mail, return receipt requested to the Consultant's Representative and the City Representative at the addresses shown in Articles One and Three hereof.

ARTICLE TWENTY-FOUR MODIFICATION OF SCOPE OF WORK

24.1. It is the intent of this Contract that City shall from time-to-time issue Notice to Proceeds for Consultant to perform work. Notice to Proceeds shall be duly approved by the City prior to issuance. Consultant shall expediently perform such work within the schedule indicated in the work order in accordance with Article Four above. Consultant shall timely cooperate with City Representative in negotiating the cost and schedule of said work orders prior to submission to the City for approval. The City reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the City's notification of a contemplated change, the Consultant shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Consultant's ability to meet the completion dates or schedules of this Contract.

24.2. If the City so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work or work order affected by a contemplated change, pending the City's decision to proceed with the change. Consultant shall be entitled to invoice City for that portion of the work completed prior to receipt of the written notice.

24.3. If the City elects to make the change, the City shall initiate a Contract Amendment and the Consultant shall not commence work on any such change until such written amendment is signed by the Consultant and the City.

ARTICLE TWENTY-FIVE MODIFICATION

25.1. The City and the Consultant agree that this Contract together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article Twenty-Three - Modification of Scope of Work. In the event of any conflict or inconsistency between this

ATTACHMENT A

Contract and the provisions in the incorporated Exhibits, the terms of this Contract shall supersede and prevail over the terms in the Exhibits.

ARTICLE TWENTY-SIX MISCELLANEOUS

26.1. Consultant, in representing City, shall promote the best interest of City and each party agrees to assume toward the other party a duty of good faith and fair dealing.

26.2. No modification, waiver, suspension or termination of the Contract or of any terms thereof shall impair the rights or liabilities of either party.

26.3. This Contract is not assignable, in whole or in part, by Consultant without the prior written consent of City.

26.4. Waiver by either party of a breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

26.5. The headings of the Articles, Schedules, Parts and Attachments as contained in this Contract are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Schedules, Parts and Attachments.

26.6. This Contract, including the referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Contract.

26.7. Consultant acknowledges that it shall comply with all applicable Federal law, regulations, executive orders, State laws and regulations and local laws, ordinances and regulations as it pertains to services being rendered under this contract.

26.8. Consultant acknowledges that some federal funds may be utilized in the course of services being performed under this agreement, as such, consultant agrees that it shall adhere to all necessary federal regulations, including those as set forth in Exhibit G_____. Further, the Consultant acknowledges that the Federal government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from this Contract.

ARTICLE TWENTY-SEVEN MINORITY/WOMEN'S BUSINESS ENTERPRISES

27.1. The Consultant must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with 2CFR 200.321. If subcontracts are to be let, prime contractor will require

ATTACHMENT A

compliance by all sub-contractors. Prior to contract award, the contractor shall document efforts to utilize M/WBE firms including what firms were solicited as suppliers and/or subcontractors as applicable and submit this information with their bid submittal. Information regarding certified M/WBE firms can be obtained from:

Florida Department of Management Services (Office of Supplier Diversity)
Florida Department of Transportation
Minority Business Development Center in most large cities and
Local Government M/DBE programs in many large counties and cities

ARTICLE TWENTY-EIGHT PROCUREMENT OF RECOVERED MATERIALS

28.1. Consultant must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

ARTICLE TWENTY-NINE ENVIRONMENTAL AND ENERGY POLICIES

29.1. The Consultant shall comply with mandatory standards and policies relating to energy efficiency, stating in the state energy conservation plan issued in compliance with the Energy Policy and Conservation act. (Pub. L. 94-163, 89 Stat. 871) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

29.2. Clean Air Act.

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

b. The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance under this Contract.

ATTACHMENT A

29.3. Federal Water Pollution Control Act.

- a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance under this Contract.

ARTICLE THIRTY FEDERAL SUSPENSION AND DEBARMENT

30.1. This Agreement may be covered in part as transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- a. The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- b. This certification is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- c. The Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE THIRTY-ONE LOBBYING

31.1. Byrd Anti-Lobbying Amendment. Consultant who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C.

ATTACHMENT A

§ 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

ARTICLE THIRTY-TWO THIRD PARTY BENEFICIARIES

32.1. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary under this Contract, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract

ARTICLE THIRTY-THREE CONTRACTING WITH THE ENEMY

33.1. In accordance with 2 C.F.R. 200.215, it is acknowledged that no services under this contract are to be performed outside the United states and its territories nor in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

ARTICLE THIRTY-FOUR SEVERABILITY

34.1. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE THIRTY-FIVE REPRESENTATION OF AUTHORITY TO CONTRACT/SIGNATORY

35.1 The individual signing this Contract on behalf of [REDACTED] represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. The signatory represents and warrants to the City that the execution and delivery of this Contract and the performance of [REDACTED] obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Consultant and enforceable in accordance with its terms.

ATTACHMENT A

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

CONSULTANT:

Authorized Representative

(printed)

CITY OF MILTON, FLORIDA

Randy Jorgenson, City Manager

(ATTEST)

Purchasing Officer

Print Name

Approved as to form:

EXHIBITS A – PROPOSAL SOLICITED
EXHIBIT B – PROPOSAL SUBMITTED
EXHIBIT C – BASIS OF COMPENSATION

ATTACHMENT A

EXHIBIT D – INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS:

Contractor shall obtain and maintain the minimum insurance coverage set forth below. By requiring such minimum insurance, the City of Milton shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

Contractor shall carry the following limits of liability as required below: Dollar amounts may change in accordance with the event or project. Events may include Food and liquor liability.

1. Commercial General Liability - ISO CG 001 Form or equivalent.

General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Each Occurrence Limit	\$1,000,000
Personal/advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$50,000
Medical Payments (Any One Person)	\$5,000

2. Automobile Liability

Bodily Injury/Property Damage	\$1,000,000 each accident
Personal Injury Protection (PIP)	Statutory

3. Workers' Compensation

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability):	
➤ Each Accident	\$100,000
➤ Disease-Each Employee	\$500,000
➤ Disease-Policy Limit	\$100,000

ATTACHMENT A

EXHIBIT E – NONDISCRIMINATION

NONDISCRIMINATION

1. During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest, agrees as follows:

a. Compliance with Regulations: The Consultant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time:

Title VI List of Pertinent Nondiscrimination Acts and Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination

ATTACHMENT A

includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

b. Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

d. Information and Reports: The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or other governmental entity to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the other governmental entity, as appropriate, and will set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of a Consultant's noncompliance with the non-discrimination provisions of this contract, the City will impose such contract sanctions as it or another applicable state or federal governmental entity may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Consultant under the Agreement until the Contractor complies; and/or

b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

Incorporation of Provisions: The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or

ATTACHMENT A

supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the Un

ATTACHMENT A

EXHIBIT F – SPECIAL CONDITIONS

Special Conditions State and Federal Certifications and Assurances

The following special conditions apply to the Agreement and are incorporated herein by reference:

CLEAN AIR AND WATER

Clean Air Act (42 U.S.C. 7401-7671g.) and Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

Applicable to Contracts in Excess of \$150,000. The Contractor agrees to report any violation to City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA).

“Facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

In compliance with regulations issued by the EPA, **(2 C.F.R. part 1532), pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.); and Executive Order 11738,** the Contractor agrees to:

- 1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the Excluded Parties List System, part of the System for Award Management (SAM), pursuant to 2 C.F.R part 1532 for the duration of time that the facility remains on the list;
- 2) Promptly notify the City if a facility the Contractor intends to use in the performance of this contract is on the Excluded Parties List System or the Contractor knows that it has been recommended to be placed on the list;
- 3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and
- 4) Include or cause to be included the provisions of this clause in every subcontract and take such action as the Federal agency may direct as a means of enforcing such provisions.
- 5)

EQUAL EMPLOYMENT OPPORTUNITY

Equal Employment Opportunity (2 CFR Part 200, Appendix II(C); 41 CFR § 61-1.4; 41 CFR 61-4.3; Executive Order 11246).

The Contractor hereby agrees that it will incorporate or cause to be incorporated into any subcontract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed,

ATTACHMENT A

and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will 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) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

ATTACHMENT A

administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Exemptions to Above Equal Opportunity Clause (41 CFR Chapter 60):

- (1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U. S. savings bonds and savings notes) are exempt. The amount of the contract, rather than the amount of the Federal financial assistance, shall govern in determining the applicability of this exemption.
 - 6)
- (2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.
 - 7)
- (3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

Standard Federal Equal Employment Opportunity Construction Contract Specifications:

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to

ATTACHMENT A

make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

ATTACHMENT A

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

ATTACHMENT A

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

ATTACHMENT A

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. If the price of this Agreement/Contract exceeds \$10,000, the Owner shall give written notice to the Director of the Office of Federal Contract Compliance Programs within ten working days of award of this Agreement/Contract. The notice is to include the name, address, and telephone number of the Contractor; the employer identification number of the Contractor; the dollar amount of this Agreement/Contract; the estimated starting and completion dates of this Agreement/Contract; the number of this Agreement/Contract; and the geographical area in which the Work is to be performed.

8)

17. If the price of this Agreement/Contract equals or exceeds \$50,000 and if the Contractor has 50 or more employees, the Contractor shall electronically file Standard Form 100 (EEO-1) online at <https://egov.eeoc.gov/eo1/eo1.jsp> within 30 calendar days after the award of this Agreement/Contract, unless the Contractor has submitted such a report within 12 months preceding the date of award of this Agreement/Contract. In addition, the Contractor shall ensure that each construction subcontractor having 50 or more employees and a lower-tier construction subcontract with a price equaling or exceeding \$50,000 also electronically files this form within 30 calendar days after the award to it of the lower-tier construction subcontract, unless the construction subcontractor has submitted such a report within 12 months preceding the date of award of the lower-tier construction subcontract.

HEALTH, SAFETY, AND ACCIDENT PREVENTION

- 1 In performing this contract, the Contractor shall:
 - (a.) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the secretary of Labor by regulation;
 - (b.) Protect the lives, health, and safety of other persons;
 - (c.) Prevent damage to property, materials, supplies, and equipment; and
 - (d.) Avoid work interruptions.
- 2 For these purposes, the Contractor shall:
 - (a.) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR part 1926. Failure to comply may result in imposition of sanctions pursuant to the **Contract Work Hour and Safety Standards (40 U.S.C. 3701-3708)**. The Certification regarding Work Hours and Safety Standards executed by Contractor and attached as part of Exhibit "G" to the Agreement is hereby acknowledged and made part of the Agreement by reference.
 - (b.) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- 3 The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to

ATTACHMENT A

property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR part 1904.

9)

- 4 The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

10)

- 5 The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the Federal agency, or the Secretary of Labor shall direct as a means of enforcing such provisions.

HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION

National Historic Preservation Act of 1966 (54 U.S.C. 300101 et seq., formerly at 16 U.S.C. 470 et seq.) and Executive Order No. 11593 of May 31, 1971. Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of the Federal agency. Construction shall be temporarily halted pending the notification process and further directions issued by the Federal agencies after consultation with the State Historic Preservation Officer (SHPO) for recover of the items.

IMMIGRATION REFORM AND CONTROL ACT OF 1986 (STATE OF FLORIDA EXECUTIVE ORDER 11-116)

The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Contractor shall only employ individuals who may legally work in the United States – either U.S. citizens or foreign citizens who are authorized to work in the U.S. The Contractor shall use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of:

ATTACHMENT A

- all new employees, during the term of this Agreement, to perform employment duties within Florida; and,
- all new employees (including subcontractors and subrecipients) assigned by the Contractor to perform work pursuant to this Agreement.

The Contractor shall include this provision in all subcontracts/subgrants it enters into for the performance of work under this Agreement.

LABOR STANDARDS PROVISIONS

If the Agreement is a prime construction contract greater than \$2,000 awarded by the City, and if required by the Federal Legislation, The Contractor must comply with the Davis Bacon Act.

Davis-Bacon Act (2 CFR Part 200; 29 CFR Part 5) and (40 U.S.C. 3141-3148)

In compliance with the Davis-Bacon Act, contractor agrees to:

- Pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- Pay wages not less than once a week.
- Place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
- The decision to award a subcontract must be conditioned upon the acceptance of the wage determination.
- The Owner shall report all suspected or reported violations to the Federal awarding agencies.

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

ATTACHMENT A

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination,

(2) The classification is utilized in the area by the construction industry, and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding.

The Federal agency or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or

ATTACHMENT A

advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal agency or its' designee may, after written notice to the Contractor, City, Applicant, or Owner, 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. The Federal agency or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that 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 that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to the Federal agencies or their designees. The payrolls submitted shall set out accurately and completely all information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Owner if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, City, or Owner, as the case may be, for transmission to the City, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the City government agency (or the applicant, City, or Owner).

ATTACHMENT A

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3; and

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City, the Federal agencies or their designee, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, City, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually

ATTACHMENT A

performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 C.F.R. Part 2, "Contractors and Subcontractors on Public Buildings or Public works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled.

ATTACHMENT A

In compliance with the Copeland Act, the contractor agrees to: Furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

LOBBYING RESTRICTIONS

(a) This Contract, or subcontract is subject to Byrd Anti Lobbying Amendment (31 U.S.C. 1352), regarding lobbying restrictions. This section is explained in the common rule, 15 C.F.R part 28 (55FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connect with the Federal awards.

11)

(b) **Contract Clause Threshold:** This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal awards.

12)

(c) **Certification and Disclosure:** Each bidder of a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award must file Form CD-512, *Certification Regarding Lobbying – Lower Tier Covered Transactions*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any

ATTACHMENT A

nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Owner, who shall forward all disclosure forms to the Federal agencies.

13)

- (d) **Continuing Disclosure Requirement:** Each Contractor or subcontractor that is subject to the Certification and disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Owner, who shall forward all disclosure forms to the Federal agencies.

LOCAL GOVERNMENT CONSTRUCTION PREFERENCES PROHIBITED

A. Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state, college, City, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

1. The contractor's maintaining an office or place of business within a particular local jurisdiction;
2. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
3. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

B. For any competitive solicitation that meets the criteria in Paragraph A., a state college, City, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by Paragraph A.

PROCUREMENT OF RECOVERED MATERIALS

Contractor and any subcontractors agree to comply with **Section 6002 of the Solid Waste Disposal Act**, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule,
- b) Fails to meet reasonable contract performance requirements, or
- c) Is only available at an unreasonable price.

WHISTLEBLOWER PROTECTION

In accordance with **41 U.S.C. 4712**, neither the Contractors (vendors), or subcontractors may discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to a person or entity listed below that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross

ATTACHMENT A

waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the completion for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

- A Member of Congress or a representative of a committee of Congress;
- An Inspector General;
- The Government Accountability Office;
- A Federal agency employee responsible for contract or grant oversight or management;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; and/or
- A management official or other employee of the Owner, contractor (vendor), or subcontractor who has the responsibility to investigate, discover, or address misconduct.

The Contractors (Vendors) and subcontractors shall inform its' employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

ATTACHMENT A

EXHIBIT G – FEDERAL REGULATIONS