

# **CONSTRUCTION SPECIFICATIONS**

**Bid No. ITB 19-030**

## **Thunderbird East & Thunderbird West Sidewalk Extensions**

*For*

**Highlands County  
Board of County Commissioners  
County Project No. 15009 & 15010**  
Lap Projects 431343-1-38-01 and 433203-1-38-01



**HCBCC Engineering Department**  
505 S. Commerce Avenue  
Sebring, Florida  
(863) 402-6877

Project No. 15009 & 15010

November 2019

**THUNDERBIRD EAST & THUNDERBIRD WEST SIDEWALK EXTENSIONS  
HIGHLANDS COUNTY PROJECT NO. 15009 & 15010**

**ITB 19-030 TABLE OF CONTENTS**

**DIVISION 0 – BIDDING AND CONTRACT DOCUMENTS**

SECTION 00010 - INVITATION TO BIDDERS  
SECTION 00100 - INSTRUCTIONS TO BIDDERS  
SECTION 00160 – CERTIFICATIONS/ASSURANCE  
SECTION 00200 - REQUIREMENTS FOR LOCAL AGENCY PROGRAM  
CONSTRUCTION PROJECTS  
SECTION 00250 - GENERAL TERMS AND CONDITIONS FOR  
CONSTRUCTION PROJECTS (rev. 9/2006)  
SECTION 00300 - BID FORM  
SECTION 00410 - BID BOND FORM  
SECTION 00500 - CONSTRUCTION CONTRACT  
SECTION 00600 - PUBLIC CONSTRUCTION BOND  
SECTION 00700 - STANDARD GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT  
SECTION 00800 - SUPPLEMENTARY CONDITIONS

**DIVISION 1 - GENERAL REQUIREMENTS**

SECTION 01010 - SUMMARY OF WORK  
SECTION 01041 - PROJECT COORDINATION  
SECTION 01050 - FIELD ENGINEERING  
SECTION 01150 - MEASUREMENT AND PAYMENT  
SECTION 01210 - PRECONSTRUCTION CONFERENCES  
SECTION 01220 - STANDARDS AND MATERIALS  
SECTION 01340 - SHOP DRAWINGS  
SECTION 01390 - PRECONSTRUCTION VIDEO  
SECTION 01410 - TESTING AND LABORATORY SERVICES  
SECTION 01545 - PROTECTION OF WORK AND PROPERTY  
SECTION 01570 - EROSION CONTROL  
SECTION 01700 - CONTRACT CLOSEOUT  
SECTION 01720 - PROJECT RECORD DOCUMENTS

**DIVISION 2 - SITEWORK**

SECTION 02200 - EARTHWORK  
SECTION 02591 - MAINTENANCE OF TRAFFIC  
SECTION 02931 - SODDING

**DIVISION 3 - CONCRETE**

SECTION 03000 - CONCRETE SIDEWALKS  
SECTION 03010 - CONCRETE WORK DRIVEWAYS  
SECTION 03020 - OPTIONAL SUB BASE

**THE FOLLOWING DIVISIONS ARE NOT APPLICABLE:**

DIVISION 4 - MASONRY  
DIVISION 5 - METALS  
DIVISION 6 - WOOD AND PLASTICS  
DIVISION 7 - THERMAL AND MOISTURE PROTECTION  
DIVISION 8 - DOORS AND WINDOWS  
DIVISION 9 - FINISHES  
DIVISION 10 - SPECIALTIES  
DIVISION 11 - EQUIPMENT  
DIVISION 12 - FURNISHINGS  
DIVISION 13 - SPECIAL CONSTRUCTION  
DIVISION 14 - CONVEYING SYSTEMS

**“BIG FOUR” LAP SPECIFICATIONS**

**Thunderbird Road East Sidewalks Drawings Sheets 1-16**

**Thunderbird Road West Sidewalk Extension Sheets 1-18**

# HIGHLANDS COUNTY

BOARD OF COUNTY COMMISSIONERS

GENERAL SERVICES & PURCHASING

## INVITATION TO BID (ITB)

The Board of County Commissioners (BCC), Highlands County, Sebring, Florida, will receive sealed bids in the County Purchasing Department for:

### **ITB 19-030 THUNDERBIRD EAST & THUNDERBIRD WEST SIDEWALK EXTENSIONS – PROJECT NO. 15009 & 15010**

Specifications may be obtained by downloading from our website: [www.highlandsfl.gov](http://www.highlandsfl.gov) or on [www.VendorRegistry.com](http://www.VendorRegistry.com). Questions can be directed at: Christine Davis, Purchasing Manager / Purchasing Division, 600 S. Commerce Ave., Sebring, FL 33870, Second Floor, Telephone: 863-402-6528, E-Mail: [cmdavis@hcbcc.org](mailto:cmdavis@hcbcc.org)

A NON -MANDATORY Pre- Bid Meeting will be held at 3:30 P.M. on Thursday, December 5, 2019 in the Engineering Training Room, 505 S. Commerce Ave., Sebring, FL 33870, Second Floor. All potential BIDDERS are encouraged attend this meeting.

Submit **one (1) original Bid Package and three (3) copies** of your bid form, bid security and other required data in a sealed envelope and marked with the bid number and name so as to identify the enclosed bid submittal. Bids must be delivered to Highlands County Purchasing Department, 600 S. Commerce Ave., at Sebring, FL 33870, so as to reach said office no later than **3:30 PM on December 20, 2019** which time they will be opened. Bids received later than the date and time as specified will be rejected. The Board will not be responsible for the late deliveries of bids that are incorrectly addressed, delivered in person, by mail or any other type of delivery service.

One or more County Commissioners may be in attendance at either or both of the above meetings.

BIDDERS submitting responses must submit bids on all work to receive consideration. A Bid Bond or Cashier's Check in an amount of five percent (5%) of the bid must be included on bids over \$100,000.00. If the successful bid is greater than \$200,000.00, a Public Construction Bond will be required. An Irrevocable Letter of Credit may be considered in lieu of the Public Construction Bond depending on its verbiage. Bid must be accompanied by evidence of BIDDER'S qualifications to do business in the State of Florida, in accordance with F.S. 489. The principal features of the Project are: To provide all labor, materials and equipment to construct the Thunderbird East & West Sidewalk Extensions. The work consists of installing approximately 4,399 linear feet of 5' concrete sidewalk, concrete driveways, grading roadside swales and installation of various drainage structures. The Highlands County Board of County Commissioners reserves the right to accept or reject any or all bids or any parts thereof, and the award, if an award is made, an award will be made to the lowest responsive and responsible bidder.

The Board reserves the right to waive irregularities in the bid. The Board of County Commissioners of Highlands County, Florida, does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of the Board's functions, including one's access to, participation, employment or treatment in its programs or activities. Anyone requiring reasonable accommodation as provided for in the Americans with Disabilities Act or Section 286.26 Florida Statutes should contact Mrs. Rebecca Cable, ADA Coordinator at: 863-402-6509 (Voice), or via Florida Relay Service 711, or by e-mail: [hrmanager@hcbcc.org](mailto:hrmanager@hcbcc.org). Requests for CART or interpreter services should be made at least 24 hours in advance to permit coordination of the service.

Board of County Commissioners  
Purchasing Department  
Highlands County, Florida

Website: [www.hcbcc.net](http://www.hcbcc.net)

**DIVISION 0 - SECTION 00100**  
**INSTRUCTIONS TO BIDDERS**  
**ITB 19-030**

**Article 1 - Defined Terms**

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated below and in Section 00700 of this ITB which are applicable to both the singular and plural thereof:
- A. Award – The selection by the County of the lowest responsible and responsive Bidder to perform the Work.
  - B. Bid – The Bid Form and other documents submitted by a Bidder in response to this ITB.
  - C. Bidder – The individual or entity who submits a Bid directly to the County.
  - D. Bid Form – Section 00300 of this ITB, which shall be used to submit a Bid.
  - E. Bidding Documents – This ITB, all Addenda to this ITB, and the Construction Documents.
  - F. Board – County’s Board of County Commissioners.
  - G. Construction Documents – The construction Drawings and Specifications for the “Thunderbird Road East Sidewalk Extension dated 2/28/19 consisting of 16 sheets and Thunderbird Road West Sidewalk Extension dated 2/28/19 and consisting of 18 sheets.”
  - H. County Attorney – The County’s Attorney.
  - I. County Engineer – The County’s Engineer.
  - J. County or Owner – Highlands County, a political subdivision of the State of Florida.
  - K. Engineer – The Engineer of Record.
  - L. Project Manager – The County’s Project Manager
  - M. Purchasing Division - The County’s Purchasing Division, which issues Bidding Documents and administers the bidding procedures.
  - N. Site – The Site described and depicted in the Construction Documents.
  - O. Work – The Work described and depicted in the Construction Documents.

**Article 2 - Copies of Bidding Documents**

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or this ITB may be obtained from the Purchasing Division.
- 2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Project Manager assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

- 2.03 Owner and Project Manager in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

### **Article 3 - Qualifications of Bidders**

- 3.01 To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit detailed written evidence with the Bid Form as follows:
- A. A list of a minimum of five (5) jobs that the Bidder has performed within the past three (3) years which are of equal magnitude and complexity as the type of work to be done for the Owner. The list should include the name of the entity, complete address, name, phone number, fax, and email of a responsible individual qualified to respond to questions concerning the Bidder's abilities, costs, schedules, etc. Prior successful, on-time accomplishment of such equal work will be a consideration in determining whether the Bidder is qualified to perform the Work.
  - B. Supervisory and staffing capabilities with resumes of the supervisory personnel planned for the Work, and the number and classification of personnel required per shift.
  - C. List of equipment available for use on this Project. Identify if equipment is owned or leased.
- 3.02 Each Bid must contain evidence of Bidder's qualification to do business in the State, in accordance with Chapter 489, Florida Statutes.
- 3.03 In addition, to demonstrate Bidder's qualifications to perform the Work, within ten (10) days and prior to Notice of Award, Bidder shall submit detailed written evidence such as financial data (note if financial data is considered confidential it must be marked as such) and other such data as may be called for below:
- A. A listing of all Subcontractors is required when the subcontract value exceeds ten percent (10%) of the total contract amount. Provide experience statements for these Subcontractors.
  - B. List of present commitments (workload), including name of project, location, and value of contract.
- 3.04 Each Bid must contain proof of enrollment in E-Verify.

### **Article 4 - Examination of Bidding Documents, Other Related Data, and Site**

- 4.01 Subsurface and Physical Conditions known to Owner are shown in the Construction Documents. No Site specific subsurface studies have been done.
- 4.02 Underground Facilities known to Owner are shown on the Construction Documents. No Site specific utility locates have been done.
- 4.03 No Hazardous Environmental Condition has been identified at the Site.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 5.03, 5.04 and 5.05 of Section 00700 Standard General Conditions of the Construction Contract as modified in Section 00800 Supplementary Conditions of the Contract Documents. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to Hazardous Environmental Conditions at the Site, if any, and possible changes in the Contract Documents due to Hazardous Environmental Conditions uncovered or revealed at the Site which were not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 5.06 of Section 00700 Standard General Conditions of the Construction Contract as modified in Section 00800 Supplementary Conditions of the Contract Documents.
- 4.05 On request, the Purchasing Division will provide Bidder access to Site to conduct such examinations, investigations, explorations, tests, and studies, as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.
- 4.06 On request, the Purchasing Division will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;
  - B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
  - C. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
  - D. Carefully study all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site;
  - E. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, test, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
  - F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Document;



- G. Become aware of the general nature of the Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Document;
- H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
- I. Promptly give Engineer and the Purchasing Division written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer and the Purchasing Division is acceptable to Bidder; and
- J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer and the Purchasing Division written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer and the Purchasing Division are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

#### **Article 5 - Pre-Bid Meeting**

5.01 There will be a NON-MANDATORY Pre-Bid Meeting as specified in ITB Section 00010 in the Engineering Training Room located at 505 S. Commerce Ave., Sebring FL 33870 as noted in the Invitation to Bid.

#### **Article 6 - Site and Other Areas**

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work is to be obtained and paid for by the Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents.

#### **Article 7 - Interpretation and Addenda**

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be directed to the Purchasing Division. Interpretations or clarifications considered necessary by the Purchasing Division and Project Manager in response to such questions will be issued by Addenda. Requests for Information (RFI) received after the set date may not be answered. Only RFI answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner, Engineer or the Purchasing Division.
- 7.03 Addenda will be posted to the County's website; [www.hcbcc.net](http://www.hcbcc.net). It is the sole responsibility of the Bidder to frequently check the County's website for Addendums.

#### **Article 8 - Bid Security**

- 8.01 A "Bid Bond" or Cashier's Check, in the amount of five percent (5%) of the Bid, must be included on each Bid over one hundred thousand dollars (\$100,000.00). If the successful Bid is greater than two hundred thousand dollars (\$200,000.00), a "Public Construction Bond" of not less than one hundred percent (100%) of the Awarded Bid amount will be required. All Bonds must be in a form acceptable to Owner and County Attorney.
- 8.02 Within thirty (30) days after the Award, Owner will return the bid securities to all Bidders whose Bids are not to be further considered in awarding the Contract. Retained bid securities will be held until the Agreement has been finally executed, after which all bid securities, other than Bidder's bond and any guarantees which have been forfeited, will be returned to the respective Bidders whose Bids they accompanied.

#### **Article 9 - Contract Times**

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and, (b) also completed and ready for final payment are set forth in the Bid Form.

#### **Article 10 - Liquidated Damages**

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

#### **Article 11 - Substitute or "Or-Equal" Items**

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment described in the Bidding Documents with consideration of possible substitute or "or-equal" items if allowed within the Bidding Documents. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will be considered by Engineer during the allotted time frame for Request for Information (RFI).

#### **Article 12 - Subcontractors, Suppliers and Others**

- 12.01 The apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days after Bid opening, submit to Owner a list of all proposed contractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identifications are required. Such list shall be accompanied by an Experience Statement with pertinent information regarding similar projects and other evidence of qualification for each Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner, Project Manager or the Purchasing Division after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.
- 12.02 If the apparent Successful Bidder declines to make any such substitution, Owner may Award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner, Project Manager or the Purchasing Division makes no written objection prior to giving of the Notice of Award will be deemed acceptable to all indicated parties subject to revocation of such acceptance after the Effective Date of the Contract as provided in Paragraph 7.06 of Section 00700 Standard General Conditions of the Construction Contract as modified in Section 00800 Supplementary Conditions of the Contract Documents.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.
- 12.04 It is the responsibility of the Contractor to ensure that all Subcontractors comply with all insurance requirements.

### **Article 13 - Bid Form**

- 13.01 Bidder shall use and/or make necessary copies of Section 00300 "Bid Form" of this ITB for their Submittal Document(s).
- 13.02 All blanks on the Bid Form shall be completed by printing in black ink or by typewriter and the Bid Form shall be signed by a person with authorization pursuant to Florida law to represent the Bidder. A Bid Price shall be indicated for each unit price item listed therein, if applicable, or the words "No Bid", "No Change", or "Not Applicable" entered. All names shall be typed or printed below the signature line with all signatures in blue ink.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership and state of organization and type of partnership shall be shown below the signature.

- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.
- 13.06 A Bid by an individual shall show the Bidder's name and official address, telephone number, fax number, and email address.
- 13.07 A Bid by a joint venture shall be executed by each participant in the joint venture in accordance with the signature requirements stated in the preceding paragraph and in the manner indicated on the Bid Form. The official address of the joint venture must be shown below the signature.
- 13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.09 All Bid Forms shall have the name, official address, telephone number, fax number, and email address for communications regarding the Bid.
- 13.10 Attachments to the Bid Form shall include the following:
  - A. Documentation as required in Article 3 of this Section including a copy of Contractors License.
  - B. All certificates of insurances from both Contractor and Subcontractor (if applicable) required to fulfill the obligations of this Project.
  - C. Certifications from Section 00160, signed and notarized.

#### **Article 14 - Basis of Bid; Evaluation of Bids**

- 14.01 Bidders shall submit a Sub Total Amount for both Thunderbird East and Thunderbird West and a Total Bid Amount for both combined as noted on the Bid Form for the Work listed in these Bid Documents.
- 14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances.

#### **Article 15 - Submittal of Bids**

- 15.01 Each prospective Bidder is furnished one copy of the Bidding Documents and if required, the Bid Bond Section 00410 of this ITB. An unbound copy of the Bid Form is to be completed and submitted with the bid security and the following data:
  - A. A current copy of Bidder's Certificate of Insurance and a statement of their ability to acquire the insurance limits and requirements stated in Paragraphs 6.02 and 6.03 of Section 00700 Standard General Conditions of the Construction Contract as modified in Section 00800 Supplementary Conditions of the Contract Documents.
  - B. An executed Statement of Indemnification.
  - C. Acknowledgement of Addenda (if applicable).

- D. All documentation from Subcontractors (if applicable) including their ability to acquire the insurance limits and requirements stated in Paragraphs 6.02 and 6.03 of Section 00700 Standard General Conditions of the Construction Contract as modified in Section 00800 Supplementary Conditions of the Contract Documents.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or Invitation to Bid and shall be enclosed in a sealed opaque envelope or package, plainly marked with the Bid #19-030, Bid / Project Title; (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation BID ENCLOSED – **ITB 19-030 “Thunderbird East & Thunderbird West Sidewalk Extensions Project No. 15009 & 15010”**. A mailed Bid shall be addressed to the Highlands County BCC; Attn: Purchasing Division, 600 S Commerce Ave., Sebring, FL 33870.

#### **Article 16 - Modification and Withdrawal of Bids**

16.01 Prior to the date and time for the opening of the Bids, a Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted.

#### **Article 17 - Opening of Bids**

17.01 Bids will be opened at the time and place indicated in the advertisement or ITB Section 00010 and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids by means of a copy of the “Bid Opening Sheet.”

#### **Article 18 - Bids to Remain Subject to Acceptance**

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form and as allowed by Section 119.071, Florida Statutes, but Owner may, in its sole discretion, release any Bid and return the bid security prior to the end of this period.

#### **Article 19 - Award of Contract**

19.01 Owner reserves the right to reject any or all Bids, including without limitation, non-conforming, non-responsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder that it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an Award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the successful Bidder.

- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause of disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 Evaluation of Bids
- A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternatives, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
  - B. In the comparison of Bids, alternatives will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purposes of comparison, Owner shall announce to all Bidders a “Base Bid plus alternatives” budget after receiving all Bids, but prior to opening them. For comparison purposes alternatives will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded. After determination of the successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to the successful Bidder on its base Bid and any combination of its additive alternate Bids for which Owner determines funds will be available at the time of award.
  - C. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
  - D. In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or the entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as required by Article 12 of this Section 00100.
- 19.04 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.
- 19.05 If the Contract is to be awarded, Owner will Award the Contract to the Bidder whose Bid is that submits the lowest responsive and responsible bid, taking into consideration those Bids in compliance with the requirements as set forth in this ITB.
- 19.06 Within thirty-five (35) days after the opening of Bids, unless otherwise stated in this ITB, Owner will accept one of the Bids or will act in accordance with these Instructions to Bidders or the Section 00250 General Terms and Conditions for Construction Projects. The acceptance of the Bid will be by written Notice of Intent of Award with an attached copy of the signed Bid tabulation, emailed, mailed or delivered to the office designated in the Bid, with a copy to all other Bidders. In the event of failure of the lowest responsible qualified Bidder to sign and return the Agreement, as prescribed herein, Owner may Award to the next lowest responsible and responsive qualified Bidder. Such Award, if made will be made within ninety (90) days after opening Bids.

- 19.07 The proposed sample contract will be submitted for review to the County staff and the County Attorney and FDOT, prior to submittal to the Board. The contract then will be forwarded to the Proposer for review. After the contract is signed by the Proposer, the contract will be placed on the agenda of the Board to be considered for approval and execution. The reviewed contract, with any changes agreed upon resulting from the review, will be placed on a Board Agenda for its approval and execution.

#### **Article 20 - Insurance**

- 20.01 When the successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Certificate of Insurance.

#### **Article 21 - Signing of Agreement**

- 21.01 When Owner gives a Notice of Award to the successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents, which are identified in the Agreement attached thereto. Within fifteen (15) days thereafter, successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached Contract Documents to Owner. Within thirty (30) days thereafter, Owner shall deliver one fully signed counterpart to successful Bidder.

#### **Article 22 - Retainage**

- 22.01 Provisions concerning retainage are set forth in the Contract Documents.

#### **Article 23 - Designated Contacts and Request for Information (RFI) Deadline**

- 23.01 All questions regarding this ITB must be submitted in writing to:

Chris Davis  
Purchasing Manager  
600 S Commerce Ave, Sebring, Florida 33870  
Phone: (863) 402-6528;  
Email: cmdavis@hcbcc.org

- 23.02 The deadline to submit questions is **5 P.M. on Wednesday, December 11, 2019**. The County will release responses in the form of an Addendum. Addendums will be posted to the County's website: [www.hcbcc.net](http://www.hcbcc.net) and on [www.VendorRegistry.com](http://www.VendorRegistry.com). It is the Contractors responsibility to obtain and review all Addendums prior to bid submittal.



**CERTIFICATION PURSUANT TO SECTION 287.087, FLORIDA STATUTES  
PREFERENCE TO DO BUSINESS WITH DRUG FREE WORKPLACE PROGRAMS  
ITB 19-030**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to the HIGHLANDS COUNTY BOARD OF COUNTY COMMISSIONERS

by \_\_\_\_\_

[Print individual's name and title]

for \_\_\_\_\_

[Print name and state of incorporation or other formation of the entity submitting this sworn statement]

whose business address is \_\_\_\_\_ and

whose Federal Employer Identification Number (FEIN) is \_\_\_\_\_ (hereinafter referred to as "Bidder")

2. CERTIFICATION

Bidder hereby certifies that at the time of its Bid the Bidder has a drug free workplace program in place. The program meets the requirements of Section 287.087, Florida Statutes.

**THIS CERTIFICATION IS MADE PURSUANT TO SECTION 287.087, FLORIDA STATUTES, AND IS, UPON DELIVERY, A PUBLIC RECORD.**

\_\_\_\_\_  
Print Name: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing Certification was sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, the duly authorized officer of \_\_\_\_\_, on its behalf, who is either personally known to me [ ] or has produced \_\_\_\_\_ as identification [ ].

(AFFIX NOTARY SEAL)

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

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

Notary Public, State of \_\_\_\_\_

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES,  
ON PUBLIC ENTITY CRIMES  
ITB 19-030**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

DESCRIPTION OF CONTRACT: \_\_\_\_\_

STATE OF FLORIDA                    }ss  
COUNTY OF \_\_\_\_\_ }

Before me, the undersigned authority, personally appeared \_\_\_\_\_ who, being by me first duly sworn, made the following statement:

1. The business address of \_\_\_\_\_ (name of bidder or contractor), is  
\_\_\_\_\_

2. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.

3. I understand that "convicted" or "conviction" is defined by the statute to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.

4. I understand that "affiliate" is defined by the statute to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.

5. Neither the bidder or contractor nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the bidder or contractor nor any affiliate of the bidder or contractor has been convicted of a public entity crime subsequent to July 1, 1989.

*(Draw a line through paragraph 5 if paragraph 6 below applies.)*

6. There has been a conviction of a public entity crime by the bidder or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the bidder or contractor who is active in the management of the bidder or contractor or an affiliate of the bidder or contractor. A determination has been made pursuant to 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is \_\_\_\_\_.

A copy of the order of the Division of Administrative Hearings is attached to this statement.

*(Draw a line through paragraph 6 if paragraph 5 above applies.)*

**THIS SWORN STATEMENT IS MADE PURSUANT TO SECTION 287.133(3)A, FLORIDA STATUTES, AND IS, UPON DELIVERY, A PUBLIC RECORD**

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

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

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

On \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Sworn and subscribed before me in the State and County first mentioned above on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(AFFIX NOTARY SEAL)

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

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

Notary Public, State of \_\_\_\_\_

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**CERTIFICATION PURSUANT TO SECTION 287.134, FLORIDA STATUTES  
DISCRIMINATION; DENIAL OR REVOCATION OF THE RIGHT TO TRANSACT BUSINESS WITH  
PUBLIC ENTITIES**

**ITB 19-030**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to the HIGHLANDS COUNTY BOARD OF COUNTY COMMISSIONERS

by \_\_\_\_\_

[Print individual's name and title]

for \_\_\_\_\_

[Print name and state of incorporation or other formation of the entity submitting this sworn statement]

whose business address is \_\_\_\_\_ and

whose Federal Employer Identification Number (FEIN) is \_\_\_\_\_ (hereinafter referred to as "Bidder")

2. CERTIFICATION

Bidder hereby certifies that at the time of its Bid the Bidder has not been placed on the discriminatory vendor list by the Department of Management Services.

**THIS CERTIFICATION IS MADE PURSUANT TO SECTION 287.134, FLORIDA STATUTES, AND IS, UPON DELIVERY, A PUBLIC RECORD.**

\_\_\_\_\_  
Print Name: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing Certification was sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, the duly authorized officer of \_\_\_\_\_, on its behalf, who is either personally known to me [ ] or has produced \_\_\_\_\_ as identification [ ].

(AFFIX NOTARY SEAL)

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

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

Notary Public, State of \_\_\_\_\_

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**CERTIFICATION OF PARTICIPATION IN THE UNITED STATES CITIZENSHIP AND IMMIGRATION  
SERVICE BUREAU'S E-VERIFY PROGRAM**

**ITB 19-030**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to the HIGHLANDS COUNTY BOARD OF COUNTY COMMISSIONERS

by \_\_\_\_\_

[Print individual's name and title]

for \_\_\_\_\_

[Print name and state of incorporation or other formation of the entity submitting this sworn statement]

whose business address is \_\_\_\_\_ and

whose Federal Employer Identification Number (FEIN) is \_\_\_\_\_ (hereinafter referred  
to as "Bidder")

2. CERTIFICATION

Bidder hereby certifies that at the time of its Bid the Bidder participates in the United States Citizenship and Immigration Services Bureau's E-Verify Program, and does not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

Bidder's E-verify Company ID #: \_\_\_\_\_

**THIS CERTIFICATION IS, UPON DELIVERY, A PUBLIC RECORD.**

\_\_\_\_\_  
Print Name: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing Certification was sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_, the duly authorized officer of  
\_\_\_\_\_, on its behalf, who is either personally known to me [ ] or has produced  
\_\_\_\_\_ as identification [ ].

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

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

(AFFIX NOTARY SEAL)

Notary Public, State of \_\_\_\_\_

## **TITLE VI ASSURANCES**

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") **Title 49, Code of Federal Regulations, Part 21**, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation*, or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40E  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 2 of 2

Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

(6.) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, or *Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(7.) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**SECTION 00200**  
**REQUIREMENTS FOR LOCAL AGENCY PROGRAM CONSTRUCTION PROJECTS**  
**(HIGHLANDS COUNTY LAP PROJECTS)**  
**CONSTRUCTION CONTRACTS**

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In case of disagreement with any other section of this contract, the Supplemental Conditions shall govern.

<b><u>Item</u></b>	<b><u>Page</u></b>
<b>BONDING AND PREQUALIFICATION .....</b>	<b>2</b>
<b>BUY AMERICA AND FOREIGN CONTRACTOR AND SUPPLIER RESTRICTION.....</b>	<b>2</b>
<b>CHANGE ORDERS.....</b>	<b>2</b>
<b>CONTRACTOR PURCHASED EQUIPMENT FOR STATE OR LOCAL OWNERSHIP .....</b>	<b>17</b>
<b>DISADVANTAGE BUSINESS ENTERPRISE (DBE).....</b>	<b>17</b>
<b>EQUAL EMPLOYMENT OPPORTUNITY.....</b>	<b>24</b>
<b>EQUIPMENT RENTAL RATES .....</b>	<b>26</b>
<b>INCENTIVE/DISINCENTIVE CLAUSES.....</b>	<b>27</b>
<b>INDIAN PREFERENCE ON FEDERAL-AID PROJECTS (LABOR &amp; EMPLOYMENT).....</b>	<b>27</b>
<b>REQUIREMENTS FOR FEDERAL JOBS-COMPLIANCE WITH FHWA 1273 .....</b>	<b>27</b>
<b>FHWA FORM 1273.....</b>	<b>28</b>
<b>LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE THE WORK.....</b>	<b>42</b>
<b>STATE/LOCAL HIRING PREFERENCE .....</b>	<b>42</b>
<b>METHOD OF BIDDING .....</b>	<b>42</b>
<b>OWNER FORCE ACCOUNT/COST EFFECTIVE JUSTIFICATION .....</b>	<b>43</b>
<b>PATENTED/PROPRIETARY MATERIALS .....</b>	<b>43</b>
<b>PREVAILING MINIMUM WAGE.....</b>	<b>43</b>
<b>PROGRESS PAYMENTS.....</b>	<b>45</b>
<b>PROHIBITION AGAINST CONVICT PRODUCED MATERIALS.....</b>	<b>49</b>
<b>PUBLIC AGENCIES IN COMPETITION WITH THE PRIVATE SECTOR.....</b>	<b>49</b>
<b>PUBLICLY-OWNED EQUIPMENT .....</b>	<b>49</b>
<b>SALVAGE CREDITS.....</b>	<b>49</b>
<b>STANDARDIZED CHANGES CONDITIONS CONTRACT CLAUSES .....</b>	<b>49</b>
<b>STATE (FLORIDA OR OTHER) - PRODUCED MATERIALS.....</b>	<b>51</b>
<b>STATE/LOCAL OWNED/FURNISHED/DESIGNATED MATERIALS.....</b>	<b>51</b>
<b>SUBCONTRACTING.....</b>	<b>51</b>
<b>TERMINATION OF CONTRACT .....</b>	<b>51</b>
<b>TIME EXTENSIONS.....</b>	<b>55</b>
<b>E- VERIFY.....</b>	<b>57</b>
<b>TITLE VI REQUIREMENTS.....</b>	<b>57</b>
<b>NON-COLLUSION PROVISION.....</b>	<b>59</b>
<b>LOBBYING CERTIFICATION .....</b>	<b>59</b>
<b>SUSPENSION AND DEBARMENT .....</b>	<b>59</b>
<b>DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM.....</b>	<b>61</b>
<b>ATTACHMENTS .....</b>	<b>63</b>

### **Bonding and Prequalification**

A Bid Bond and a Construction Bond is required. See Instructions to the Bidders Article 8 Section 00100-6 for Bid Security information. Bid Bond Form is located in Section 00410. See Instructions to the Bidders Article 20.1 Section 00100-11 for Construction Bond information. The Construction Bond Form is located in Section 00600.

Highlands County will require contractor to be FDOT Pre-qualified for trades in this project.

### **Buy America and Foreign Contractor and Supplier Restriction**

Please be advised that this bid is not limited to American owned contractors.

**Source of Supply - Steel (Federal-Aid Contracts Only):** For Federal-aid Contracts, only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$(actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

### **Change Orders**

***Definitions.*** As used in this subpart:

*Administrator* means the Highlands County Project Manager.

*Calendar day* means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

*Contract time* means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

*Design-build project* means a project to be developed using one or more design-build contracts.

*Division Administrator* means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.



*Force account* means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

*Formal approval* means approval in writing or the electronic transmission of such approval.

*Incentive/disincentive for early completion* as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

*Liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State transportation department because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

*Local public agency* means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters.

*Major change or major extra work* means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of the work.

*Materially unbalanced bid* means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Federal Government.

*Mathematically unbalanced bid* means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

*Public agency* means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

*Publicly owned equipment* means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

*Specialty items* means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general, these items are to be limited to minor components of the overall contract.

*State transportation department (STD)* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State transportation department" if the context so implies.

*Workday* means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

***Changes and extra work.***

- (a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Administrator and approved by FDOT in advance of their effective dates. However, when emergency or unusual conditions justify, the Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.
- (b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Administrator. The STD should establish and document with the Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.
- (c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Administrator.
- (d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.
- (e) The STD shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Administrator.
- (f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Administrator.

***Contract time and contract time extensions.***

- (a) The STD should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Administrator within 6 months of the effective date of this Final Rule.
- (b) Contract time extensions granted by a STD shall be subject to the concurrence of the Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

**Disadvantage Business Enterprise (DBE)**

**General:** Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department (FDOT) approves the plan. The DBE Affirmative Action Program Plan and commitment to carry out the Plan must be incorporated into and become a part of the awarded

Contract.

**Required Contract and Subcontract DBE Assurance Language:** Per 49 CFR 26.13 (b) each Contract FDOT signs with a Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may

result in the termination of this Contract or such other remedy as the recipient deems appropriate.”

**Plan Requirements:** Include the following in the DBE Affirmative Action Program Plan:

(a) A policy statement, expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible. The policy making body must issue a policy statement signed by the chairperson, which expresses its commitment to utilize DBEs, outlines the various levels of responsibility, and states the objectives of the program. Circulate the policy statement throughout the Contractor’s organization.

(b) The designation of a Liaison Officer within the Contractor’s organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

Use techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs to apply for certification with the FDOT.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the FDOT.

**DBE Records and Reports:** Submit the Anticipated DBE Participation Statement at or before the Pre-Construction Conference. Report monthly, through the Equal Opportunity Reporting System on the FDOT’s Website, actual payments, (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers. The Equal Opportunity Office will provide instruction on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

- (a) the procedures adopted to comply with these Specifications;

- (b) the number of subordinated Contracts on FDOT projects awarded to DBEs;

- (c) the dollar value of the Contracts awarded to DBEs;

- (d) the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;

- (e) a description of the general categories of Contracts awarded to DBEs; and

- (f) the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the FDOT for review.

All such records are required to be maintained for a period of five years following acceptance of final payment and have them available for inspection by the FDOT and the Federal Highway Administration.

**Counting DBE Participation and Commercially Useful Functions:** 49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. On the Anticipated DBE Participation Statement only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Submit a revised Anticipated DBE Participation State to reflect changes to the initial Anticipated DBE Participation Statement within 14 business days from the date of the change.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, forexample:

- (a) The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted ad DBE credit.
- (b) The Department will count the entire amount of fees or commissions changed by the DBE firm for providing bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.
- (c) When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (d) When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.
- (e) The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function in the work of a contract may be counted toward the voluntary DBE goal.
- (f) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- (g) To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with

the work it is actually performing and the DBE credit claimed for its performance of the work and other relevant factors.

- (h) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
- (i) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

### **Equal Employment Opportunity**

**Equal Employment Opportunity Policy:** Accept as the operating policy, the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, national origin, sex, or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their age, race, religion, color. National origin, sex, or disability. Such action must include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**Equal Employment Opportunity Officer:** Designate and make known to the Department's contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active Contractor program employment opportunity and who must be assigned adequate authority and responsibility to do so.

**Dissemination of Policy:** All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's equal employment opportunity policy and contractual responsibilities.

**Recruitment:** When advertising for employees, include in all advertisements for employees the notation "An Equal Opportunity Employer".

**Personnel Actions:** Establish and administer wages, working conditions, employee benefits, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff and termination without regard to age, race, color, religion, national origin, sex, or disability.

Follow the following procedures:

(1) Conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(2) Periodically evaluate the spread of wages paid with each classification to determine any evidence of discriminatory wage practices.

(3) Periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action must include all affected persons.

(4) Investigate all complaints of alleged discrimination made in connection with obligations under this Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action must include such other persons. Upon completion of each investigation inform every complainant of all of the avenues of appeal.

**Subcontracting:** Use the best efforts to ensure subcontractor compliance with their equal employment opportunity policy.

**Records and Reports:** keep such records as are necessary to determine compliance with the equal employment opportunity obligations. The records kept will be designed to indicate the following:

(1) The number of minority and non-minority group members employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to Contractors who rely in whole or

in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.

All such records must be retained for a period of three years following completion of the contract work and be available at reasonable times and places for inspection by authorized representatives to the Department and the Federal Highway Administration.

Upon request, submit to the Department a report of the number of minority and non-minority group employees currently engaged in each work classification required by this Contract work.

### **Equipment Rental Rates**

For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

- (1) Allowable Hourly Equipment Rate =  $\text{Monthly Rate} / 176 \times \text{Adjustment Factors} \times 100\%$ .
- (2) Allowable Hourly Operating Cost =  $\text{Hourly Operating Cost} \times 100\%$ .
- (3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- (4) Standby Rate = Allowable Hourly Equipment Rate  $\times 50\%$ .

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Owner will allow for the cost of transporting the equipment to and from the location



at which it will be used. If the equipment requires assembly or disassembly for transport, the Owner will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

**Incentive/Disincentive Clauses**

Not applicable to this contract.

**Indian Preference On Federal-Aid Projects (Labor & Employment)**

Not applicable to this contract.

**Requirements For Federal Jobs-Compliance With FHWA 1273**

The FHWA-1273 Electronic version, dated March 10, 1994 is posted on the Department of Transportation's website at the following URL address:  
[www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/files/df1273.pdf](http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/files/df1273.pdf).

Take responsibility to obtain this information and comply with all requirements posted on this website through five calendar days before the opening of bids. Comply with the provisions contained in FHWA-1273 and certify monthly compliance with the EEO provisions of FHWA- 1273 (Section II. Nondiscrimination and Section III. Non-segregated Facilities). In addition to the requirements of FHWA-1273, Section V, No. 2(b), include gender and race in the weekly annotated payroll records. Federal Regulations (29 CFR 3.5) states that Social Security numbers and address of employees shall not be included on submitted payrolls for contracts let after January 18, 2009. In lieu of Social Security number, an employee identifying number must be listed. The employer may use the last four digits of the Social Security number or another assigned number as the employee identifying number.

**FHWA Form 1273 included on next page**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
  - II. Nondiscrimination
  - III. Nonsegregated Facilities
  - IV. Davis-Bacon and Related Act Provisions
  - V. Contract Work Hours and Safety Standards Act Provisions
  - VI. Subletting or Assigning the Contract
  - VII. Safety: Accident Prevention
  - VIII. False Statements Concerning Highway Projects
  - IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
  - X. Compliance with Governmentwide Suspension and Debarment Requirements
  - XI. Certification Regarding Use of Contract Funds for Lobbying
- contract by piecework, station work, or by subcontract.

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

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

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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



d. Apprentices and Trainees (programs of the U.S.DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

**10. Certification of eligibility.**

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

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

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

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph(1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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### **Liquidated Damages for Failure to Complete the Work**

Applicable liquidated damages are the amounts established in the following schedule:

Contract Amount	Daily Charge Per Calendar Day
\$50,000 and under	\$278.00
Over \$50,000 but less than \$250,000	\$388.00
\$250,000 but less than \$500,000	\$566.00
\$500,000 but less than \$2,500,000	\$1,148.00
\$2,500,000 but less than \$5,000,000	\$1,914.00
\$5,000,000 but less than \$10,000,000	\$2,514.00
\$10,000,000 but less than \$15,000,000	\$3,300.00
\$15,000,000 but less than \$20,000,000	\$3,782.00
\$20,000,000 and over	\$5,684.00 plus
0.00005 of any amount over \$20 million	

For all contracts, regardless of whether the contract time is stipulated in calendar days or working days, the Engineer will count default days in calendar days. If the Contractor or, in case of his default, the surety fails to complete the work within the time stipulated in the Contract, or within such extra time that the Owner may have granted the Contractor or, in case of his default, the surety shall pay to the Owner, not as a penalty, but as liquidated damages, in the amount of \$1,148.00 per calendar day in which work is not completed.

The Owner has the right to apply, as payment on such liquidated damages, any money the Owner owes the Contractor.

The Owner does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.

In the case of default of the Contract and the completion of the work by the Owner, the Contractor and his surety are liable for the liquidated damages under the Contract, but the Owner will not charge liquidated damages for any delay in the final completion of the Owner's performance of the work due to any unreasonable action or delay on the part of the Owner.

The Owner considers the Contract complete when the Contractor has completed all work and the Owner has accepted the work. The Owner will then release the Contractor from further obligation except as set forth in his bond.

### **State/Local Hiring Preference**

The Owner certifies that this contract does not include state or local hiring preferences.

### **Method of Bidding**

The OWNER certifies that this project shall be awarded to the of the lowest responsive and responsible bidder.



### **Owner Force Account/Cost Effective Justification**

Not applicable to this contract the Owner will be utilizing an independent contractor to perform the scope of work.

### **Patented/Proprietary Materials**

The Owner certifies that neither patented or proprietary materials are required or specifically named in the specifications to be used for this project.

### **Prevailing Minimum Wage**

For this contract, payment of predetermined minimum wages applies. The U.S. Department of Labor Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) **FL20190155**, as modified up through ten days prior to the opening of bids.

Obtain the applicable General Decision(s) (Wage Tables) through the Department's Office of Construction website and ensure that employees receive the minimum compensation applicable. Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed.

**Wage Decision is on the next page**

"General Decision Number: FL20190155 11/01/2019

Superseded General Decision Number: FL20180198

State: Florida

Construction Type: Highway

Counties: Hardee, Highlands and Okeechobee Counties in Florida.

#### HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the

federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019
1	08/30/2019
2	11/01/2019

\* ELEC0349-002 09/02/2019

	Rates	Fringes
ELECTRICIAN.....\$	35.36	12.77

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SUFL2013-016 08/19/2013

	Rates	Fringes
CARPENTER, Includes Form Work....\$	11.95	1.44
CEMENT MASON/CONCRETE FINISHER...\$	13.65	0.00
HIGHWAY/PARKING LOT STRIPING:		
Operator (Striping Machine).....\$	12.70	0.00
HIGHWAY/PARKING LOT STRIPING:		
Operator (Spray Nozzleman).....\$	13.08	0.00
INSTALLER - GUARDRAIL.....\$	14.44	0.00
IRONWORKER, REINFORCING.....\$	13.85	0.00

LABORER (Traffic Control Specialist).....\$	12.17	1.71
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....\$	13.60	0.00
LABORER: Common or General.....\$	11.41	0.00
LABORER: Flagger.....\$	9.87	0.00
LABORER: Grade Checker.....\$	11.45	0.00
LABORER: Landscape & Irrigation.....\$	11.16	0.00
LABORER: Pipelayer.....\$	12.68	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....\$	15.86	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....\$	11.60	0.00
OPERATOR: Broom/Sweeper.....\$	10.89	0.00
OPERATOR: Bulldozer.....\$	13.90	0.00
OPERATOR: Crane.....\$	17.83	0.00
OPERATOR: Forklift.....\$	11.03	0.00
OPERATOR: Grader/Blade.....\$	16.08	0.00
OPERATOR: Loader.....\$	16.59	0.00
OPERATOR: Mechanic.....\$	13.55	0.00

OPERATOR: Milling Machine.....\$	13.23	0.00
OPERATOR: Oiler.....\$	12.61	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....\$	18.17	0.00
OPERATOR: Roller.....\$	12.53	0.00
OPERATOR: Screed.....\$	15.79	0.00
OPERATOR: Trencher.....\$	16.00	0.00
TRAFFIC SIGNALIZATION:		
Traffic Signal Installation.....\$	19.03	0.00
TRUCK DRIVER: Dump Truck.....\$	12.66	0.00
TRUCK DRIVER: Lowboy Truck.....\$	14.94	0.00
TRUCK DRIVER: Water Truck.....\$	13.05	0.00

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the Davis-  
Bacon Act for which the contract is awarded (and any solicitation  
was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours  
they work, up to 56 hours of paid sick leave each year.  
Employees must be permitted to use paid sick leave for their

own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198

indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010

08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:



Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

## **PROGRESS PAYMENTS**

### **Partial Payments**

**General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including deliver of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Owner will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

The Owner will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Owner will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements. Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each job on multiple job Contracts. The Owner will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

**Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Owner, the Owner may disqualify the Contractor from bidding on future Owner contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory. The Owner may also disqualify the surety from issuing bonds for future Owner contracts if they similarly fail to perform under the terms of their bond.

**Withholding Payment for Defective Work:** If the Owner discovers any defective work or material prior to the final acceptance, or if the Owner has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Owner will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**Withholding Payment for Failure to Comply:** The Owner will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work;

- (a) Comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job Training and Affirmative Action;
- (b) Comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Report System;
- (c) Comply with or make a good faith effort to ensure employment opportunity for

- minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and
- (d) Comply with or make a good faith effort to meet On-The-Job Training goals.

The Owner will withhold progress payments until the Contract has satisfied the above conditions.

**Release of Retainage After Acceptance:** When the Contractor has furnished the Owner with all submittals required by the Contract, such as invoices, EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Owner may reduce the retainage to \$1,000 plus any amount that the Owner elects to deduct for defective work.

The Owner will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days.

The Owner may deduct from payment estimates any sums that the Contractor owes to the Owner on any account. Where more than one project or job (separate job number) is included in the Contract, the Owner will distribute the reduced retainage as provided in the first paragraph of this Subarticle to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

#### **Partial Payments for Delivery of Certain Materials:**

**General:** The Owner will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

- (1) There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
- (2) The stockpiled material must be approved as meeting applicable specifications.
- (3) The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
- (4) The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.
- (5) Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
- (6) Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**Partial Payment Amounts:** The following partial payment restrictions apply:

- (1) Partial payments less than \$5,000 for any one month will not be processed.
- (2) Partial payments for structural steel and precast pre-stressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid prices of the item in which the material is to be used.
- (3) Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Owner requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

**Off Site Storage:** If the conditions of the General section above are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions above and the following conditions are met:

- (1) Furnish the Owner a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Owner. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Owner. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.
- (2) The following clauses must be added to the construction contract between the Contractor and the supplier of the stockpiled materials:  
“Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Owner should <supplier> default in the performance of this agreement.”  
“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the contractor’s obligation to furnish the materials described in this agreement to the Owner.”
- (3) The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contract.

**Certification of Payment to Subcontractors:** The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Owner has made partial payment and firms working under equipment-rental agreements. The contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Owner will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Owner. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all Subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor’s work. Provide this certification in the form designated by the Owner.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Owner will honor an exception to the above when the written notification of any such good cause to both the Owner and the affected subcontractors or suppliers within said 30 day period.

**Acceptance and Final Payment Documents:** Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The Owner will pay the estimate, less any sums that the Owner may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work, along with all executed supplemental agreements received after final acceptance.

### **Prohibition Against Convict Produced Materials**

**Source of Supply — Convict Labor (Federal-Aid Contracts Only):** Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:

1. materials produced by convicts on parole, supervised release, or probation from a prison or,
2. materials produced in a qualified prison facility.

The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

### **Public Agencies in Competition With the Private Sector**

The OWNER does not allow other Public Agencies to compete with or bid on construction projects against the private sector.

### **Publicly-Owned Equipment**

The OWNER does not allow Contractors the use of publicly owned equipment.

### **Salvage Credits**

The OWNER does not allow the contractor to get credits for salvageable materials.

### **Standardized Changes Conditions Contract Clauses**

**Differing site conditions.** (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work

provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(i) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(i) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

**Suspensions of work ordered by the engineer.** (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

**Significant changes in the character of work.** (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character

of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to

the actual amount of work performed.

### **State (Florida or other) - Produced Materials**

The OWNER certifies that preference is not given to contractors who purchases materials from and specifically designated state.

### **State/Local Owned/Furnished/Designated Materials**

All materials required for this project shall be furnished by the contractor. Projects located on the National Highway System shall require FHWA approval for direct purchase of materials by the Owner.

### **Subcontracting**

Do not sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Owner. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by the Owner for this purpose. With the Engineer's acceptance of the request, the contractor may sublet a portion of the work, but shall perform with his own organization work amounting to not less than 30% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the Owner, for purposes of the Owner's consent, unless the engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Owner is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Owner will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the contractor sublets a part of a Contract item, the Owner will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Owner with a copy of the subcontract. The subletting of work does not relieve the Owner or the surety of their respective liabilities under the Contract.

The Owner recognizes a subcontractor only in the capacity of an employee or agent of the Contractor and Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

### **Termination of Contract**

## **SUSPENSION OF WORK AND TERMINATION**

### **Suspension of Work**

At any time and without cause, the County may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the



Contractor and the Professional which will fix the date on which Work will be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if the Contractor makes any approved claim therefore as provided in Articles 12 and 13.

### **Termination For Cause**

Upon the occurrence of anyone or more of the following event:

If the Contractor fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established;

If the Contractor disregards Laws, Regulations or Permits of any public body having jurisdiction; If the Contractor disregards the lawful authority or reasonable instructions of the Professional or Project Manager or;

If the Contractor otherwise violates in any substantial way any provisions of the Contract documents;

If the Contractor is adjudged a bankrupt or insolvent;

If the Contractor makes a general assignment for the benefit of any of its creditors;

If a trustee or receiver is appointed for Contractor or for any of its property;

If the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;

If the Contractor shall fail to obtain a vacation or stay of any involuntary bankruptcy proceedings within 30 Days after the filing thereof;

If the Contractor fails to make prompt payments to Subcontractors for labor, materials or equipment;

If any representation of Contractor made in this Agreement or other instrument furnished in connection with this Agreement shall prove false or misleading in any material respect;

If any bond or insurance provided hereunder is cancelled, repudiated or otherwise terminated without being replaced within three Business Days in form and substance and from a company acceptable to the County;

If there is a material adverse change in the financial condition of the company providing any bond or insurance, and within five Business Days after such change in financial condition, Contractor has not provided County with a substitute in form and substance satisfactory to the County; or

If the Contractor is otherwise in default, beyond the expiration of applicable grace or cure periods, if any, under any term or terms of this Contractor, including, without limitation, that Contractor has assigned this Agreement, in whole or in part without the consent of the County, has abandoned this Contract, suspended the progress of the Work, not executing the Work in accordance with this Contract, failing to diligently proceed with the Work, or neglecting to carry out its obligations under the Contract so as to affect adversely the carrying out of the Work.

The County may, after giving the Contractor (and the surety, if any) seven (7) working days' written notice and to the extent permitted by Laws and Regulations, terminate the services of the Contractor, exclude the Contractor from the site and take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the County has paid the Contractor but which are stored elsewhere and finish the Work as County may deem expedient. In such case, the Contractor shall not be entitled to receive any further

payment beyond an amount equal to the value of the work actually completed and the value of materials and equipment not incorporated in the work but delivered and suitably stored, less the aggregate of payments previously made. If the direct and indirect costs of completing the work exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the County. Such costs incurred by the County shall be verified by the Professional and incorporated in a change order, but in finishing the work the County shall not be required to obtain the lowest figure for the work performed. The Contractor's obligations to pay the difference between such costs and such unpaid balance shall survive termination of the agreement.

In the event the County terminates the contract for cause and it is subsequently judicially determined that there was no cause for termination, the termination for convenience provision shall be the sole means for disposition of the balance of the contract obligations.

Notwithstanding the foregoing, County may avail itself of such other remedies that may be available at law or in equity in the event County terminates for cause in accordance with Article 16.2.1.

### **Termination for Convenience**

Upon seven (7) working days' written notice to the Contractor and the Professional, the County may, without cause and without prejudice to any other right or remedy of the County, elect to terminate the Contract. In such case, the Contractor shall be paid (without duplication of any items):

For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

For direct expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

For all reasonable claims, costs, losses and damages incurred in settlement of terminated contracts with subcontractors, suppliers and others; and

For reasonable expenses directly attributable to termination.

The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

If through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) calendar days by the County or under an order of court or other public authority, or the Professional fails to act on any Application for Payment within thirty (30) calendar days after it is submitted or the County fails for thirty-one (31) calendar days to pay the Contractor any sum finally determined to be due, then the Contractor may upon seven (7) working days written notice to the County and the Professional and provided the County or the Professional did not remedy such suspension or failure within that time, terminate the Agreement and recover from the County payment on the same terms as provided in 16.22. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if the Professional has failed to act on an Application for Payment within thirty (30) calendar days after it is submitted, or the County has failed for thirty-one (31) calendar days to pay the Contractor any sum finally determined to be due, the Contractor may upon seven (7) days written notice to the County and the Professional stop the Work until payment of all such amounts due the Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude the Contractor from making claim under Articles 12 and 13 for an increase in Contract

Price or Contract Times or otherwise for expenses or damage directly attributable to the Contractor's stopping Work as permitted by this paragraph.

**Force Majeure**

Force Majeure means:

- (a) war, hostilities (whether war be declared or not), disease, epidemic, invasion, terrorism, or act by foreign enemies;
- (b) pressure waves caused by aircraft or other aerial devices traveling at sonic or subsonic speeds;
- (c) rebellion, revolution, insurrection, military or usurped power or civil war;
- (d) riot, civil commotion or disorder;
- (e) acts of God, fire, flood, lightening, windstorm, tornadoes, hurricane, extraordinary breakdown of or damage to the **County's** affiliate; and
- (f) any circumstances beyond the reasonable control of either of the Parties.

Inclement and severe weather which is typical within central Florida through the period the Work is anticipated and shall not entitle a party to claim relief by Force Majeure or for delay damages.

**Notice of Force Majeure**

If either party is prevented or delayed from or in performing any of its obligations under this Contract Document by Force Majeure, then it shall notify the other party of the circumstances constituting the Force Majeure and the obligations which are delayed or prevented, and the party giving the notice shall thereupon be excused from the performance or punctual performance and any damages (whether liquidated or otherwise), as the case may be, of such obligation for so long as the circumstances of prevention or delay may continue. The Performance Schedule shall be extended for a like period of time as that of the Force Majeure event. Both Parties will be responsible for its own costs during a period of Force Majeure.

**Termination for Force Majeure**

Notwithstanding that the Contractor may have been granted under Article 13 (Change of Contract Time) an extension of the Time for Completion of the Work, if by virtue of Article 16.5 (Notice of Force Majeure) either party shall be excused the performance of any obligation for a continuous period of thirty (30) days, then either party may at any time thereafter, and provided that such performance or punctual performance is still excused, by notice to the other terminate this Contract Document.

**Payment on Termination for Force Majeure**

If this Agreement is terminated pursuant to Article 16.6 (Termination for Force Majeure), the Professional shall instruct, and the County shall pay to the Contractor in so far as the same shall not have been included within previous invoices paid by the County or be subject of an advance payment, the Contract Value of the Work completed prior to the date of termination.

The Contractor shall also be entitled to have included in the final invoice of payment fees and to be paid:

- (a) The cost of materials or goods reasonably ordered for the Work or for use in connection with the Work which has been delivered to the Contractor or of which the Contractor is legally liable to accept delivery of, and may not be returned. Such materials or goods shall become the property of the County when paid for by the County. (The County shall be entitled to withhold payment in respect thereof until such goods of materials have been delivered to, or to the order of, the County);
- (b) The amount of any other expenditure which under the circumstances was reasonably incurred by the Contractor in the expectation of completing the whole of the Work; and

- (c) The reasonable cost of removal of the Contractor's equipment and the return thereof to the Contractor or any other destination at no greater cost.
- (d) All amounts retained under Article 15.2.

### **Time Extensions**

**Contract Time Extensions:** The County may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The County may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the County to fulfill an obligation under the Contract results in delays to the controlling construction operations, the County will consider such delays as a basis for granting a time extension to the Contract. Whenever the Engineer suspends the Contractor's operations for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The County will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor. The County does not include an allowance for delays caused by the effects of inclement weather in establishing Contract Time. The County will grant time extensions, on a day for day basis, for delays caused only by the effects of rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work resulting in:

- (1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions; or
- (2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items. No additional compensation will be made for delays caused by the effects of inclement weather. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather. The County will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. The County will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. The County will consider the affect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:
  - (1) Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.

(2) Utility work actually affected progress toward completion of controlling work items.

(3) The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer: A preliminary request for an extension of Contract Time in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay. In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay; and further, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the County to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay. Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a fiscal adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The existence of an accepted schedule, including any required update(s), as stated in 8-3.2, is a condition precedent to the Contractor having any right to the granting of an extension of contract time or any monetary compensation arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the County's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the County's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing

evidence to a Disputes Review Board that the County's determination was without any reasonable factual basis.

### **E- VERIFY**

Vendor/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;

1. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
2. all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Agency.

### **TITLE VI Requirements**

The Sub-recipient or Contractor, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 200d to 200d-7 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability in consideration for an award.

While performing this contract, the contractor - for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") - agrees to the following:

**1. Compliance with Regulations:** The contractor will comply with the Regulations on nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation ("USDOT") Title 49, Code of Federal Regulations, Part 21. The recommendations may be amended from time to time, (from here on referred to as the Regulations). They are incorporated here by reference and made a part of this contract.

**2. Nondiscrimination:** In work performed during the contract, the Contractor will not discriminate on the grounds of race, color, or national origin in the selection and holding of subcontractors. This includes obtaining materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations. This includes employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, the contractor will inform each potential subcontractor or supplier of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin. The solicitations includes obtaining materials or leases of equipment,

**4. Information and Reports:** The contractor will provide all information and reports required by the Regulations or directives. It will also permit access to its books, records, accounts, other sources of information, and its facilities that are determined by the (Recipient) or the (Name of

Appropriate Administration) to be important to ensure compliance with such Regulations, orders and instructions. In some cases, another entity possesses the information required of a contractor and refuses to give the information. Here, the contractor will confirm the lack of information with the (Recipient), or the (Name of the Administration) as appropriate, and will explain its efforts to obtain the information.

**5. Sanctions for Noncompliance:** In the event that the contractor does not comply with the nondiscrimination provisions of this contract, the (Recipient) should enforce contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate. Sanctions may include, but are not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination or suspension of the contract, in whole or in part.

**6. Incorporation of Provisions:** The contractor should include the terms of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued modifying the Provisions. The contractor will take action with on any subcontract or procurement that the (Recipient) or the (Name of Appropriate Administration) directs in order to enforce provisions including sanctions for non-compliance. However, if a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the contractor may ask the (Recipient) to enter into such litigation to protect the interests of the (Recipient). Also, the contractor may ask the United States to enter into such litigation to protect the interests of the UnitedStates.

**(End Of Page)**

## **THE CONTRACTOR CERTIFIES THE FOLLOWING STATEMENTS:**

### **Non-Collusion Provision**

The undersigned hereby certifies, to the best of his or her knowledge and belief, that on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

### **Lobbying Certification**

“The undersigned hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence either directly or indirectly an officer or employee of any state or federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L “Disclosure Form to Report Lobbying”, in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, US Code. Any persons who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.”

### **Suspension and Debarment**

“The Bidder certifies that, neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:



(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and

(d) has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Bidder certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the Florida Department of Transportation.”

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Signature

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Printed Name

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Firm Name



## **FLORIDA DEPARTMENT OF TRANSPORTATION**

Equal Opportunity Office  
605 Suwannee Street, MS-65  
Tallahassee, Florida 32399-0450

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM** **PLAN FOR LOCAL AGENCIES**

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#### **Purpose**

The Florida Department of Transportation (Department) has been charged with reporting DBE information to the U.S. Department of Transportation Federal Highway Administration (FHWA) according to 49 Code of Federal Regulations (CFR) Part 26.

#### **Objective**

To assist Local Agencies (Cities, Counties and Metropolitan Planning Organizations) receiving Federal funds from the Department to comply with the Federal DBE Program requirements.

#### **DBE Utilization**

The Department began its race neutral DBE program on January 1, 2000. Contract specific goals are not placed on State/Federal contracts; however, the Department has an overall 8.18% goal it must achieve. Participating Local Agencies must adopt the Department's DBE Program goal. Further information about the Department's DBE Program goal can be found at: [www.dot.state.fl.us/equalopportunityoffice/](http://www.dot.state.fl.us/equalopportunityoffice/).

Local Agencies should monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract, information will be requested of the contractor's anticipated DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's Voluntary DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

**NOTE:** Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBEs

#### **Required Information**

Each Local Agency is required to provide the following information to the District Local Agency Program (LAP) Administrator for verification. The District LAP Administrator will forward the information to the Equal Opportunity Office.

## **1. Anticipated DBE Participation Statement (Form No. 275-030-11)**

The “Anticipated DBE Participation Statement” shall be completed and submitted by the Contractor at the pre-construction conference or by the Consultant during the negotiation process. The Statement must only include companies certified as a DBE. The Statement can and should be updated when additions or deletions are made through the life of the contract. This will not become a mandatory part of the contract. It will assist the Department in tracking planned or estimated DBE participation. The Local Agency must send the Statement to the District LAP Administrator or designee who will forward the information to the Department’s Equal Opportunity Office at the following address:

Florida Department of Transportation  
Equal Opportunity Office  
605 Suwannee Street. MS-65  
Tallahassee, Florida 32399-0450  
Fax Number: (850) 414-4879

## **2. Bid Opportunity List (Form No. 275-030-10)**

Federal regulations require States to maintain a database of all firms that are participating or attempting to participate in Department -assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on Department-assisted projects, including both DBEs and non-DBEs. The “Bid Opportunity List” is used to record the bidder information for all Subcontractors or Subconsultants who submitted bids to Primes. This information should be returned with the bid or proposal package. The Local Agency must send the form to the District LAP Administrator who will forward to the Equal Opportunity Office at:

Florida Department of Transportation  
Equal Opportunity Office  
605 Suwannee Street. MS-65  
Tallahassee, Florida 32399-0450  
Fax Number: (850) 414-4879

## **3. Instructions for Reporting Actual Payments**

To comply with 49 Code of Federal Regulations (CFR) Part 26, the Department is also required to collect actual payments made to Subcontractors and Subconsultants in addition to the planned DBE participation. The Local Agency is required to report data on actual payments, minority status, and the type of work of all Subcontractors, Subconsultants, and major Suppliers. Each month the Local Agency must report actual payments to all DBE Subcontractors, Subconsultants, and Suppliers. Payments to all non-DBE Subcontractors and Subconsultants can be reported either monthly or at the end of the project. Local Agency may submit this information to the District LAP Administrator or designee manually or electronically in an Excel spreadsheet. This information will be forwarded to Carol Greene, DBE Program Analyst at [Carol.Greene@dot.state.fl.us](mailto:Carol.Greene@dot.state.fl.us).

## **ATTACHMENTS**

1. Required DBE Language for Contracts
2. Anticipated DBE Participation Statement (**Form No. 275-030-11**)
3. Instructions for Reporting Actual Payments
4. Bid Opportunity List (**Form No. 275-030-10**)
5. Certification of Current Capacity (**Form No. 525-010-46**)

## **Attachment 1**

### **DBE LANGUAGE for CONSTRUCTION CONTRACTS**

Contract Assurance: *The Contractor, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department-assisted contracts. Failure of the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Recipient deems appropriate.*

### **DBE LANGUAGE for CONSULTANT CONTRACTS**

Contract Assurance: *The Consultant, Subrecipient, or subconsultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department- assisted contracts. Failure of the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Recipient deems appropriate.*

**DBE Utilization**

The Department began its DBE race neutral program January 1, 2000. **Contract specific goals are not placed on Federal/State contracts;** however, the Department has an overall 10.65% DBE goal it must achieve. In order to assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this letting.

As you prepare your bid, please monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract with the Department, information will be requested of the contractor's DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBE's.

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information. Forms may be downloaded at: [www.dot.state.fl.us/proceduraldocuments/](http://www.dot.state.fl.us/proceduraldocuments/) .

**DBE Reporting**

If you are the prime contractor on a project, enter your DBE participation in the Equal Opportunity Compliance system prior to the pre-construction or pre-work conference for all federal and state funded projects. This **will not** become a mandatory part of the contract. It will assist the Department in tracking and reporting planned or estimated DBE utilization. During the contract, the prime contractor is required to report actual payments to DBE and MBE subcontractors through the web-based Equal Opportunity Compliance (EOC) system.

All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact EOOHelp@dot.state.fl.us.

**Bid Opportunity List**

The Federal DBE Program requires States to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including both **DBE's and non-DBEs**.

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within 3 business days of submission of the bid or proposal for ALL subcontractors or sub-consultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is:

<https://www3.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/Login?ReturnUrl=%2fEqualOpportunityCompliance%2f> .

**DBE/AA Plans**

Contractors bidding on FDOT contracts are to have an approved DBE Affirmative Action Plan (FDOT Form 275-030-11B) on file with the FDOT Equal Opportunity Office before execution of a contract. DBE/AA Plans must be received with the contractors bid or received by the Equal Opportunity Office prior to the award of the contract.

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida

Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a (3) three year period and should be updated at anytime there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

- Print the first page of the document on company stationery ("letterhead") that indicates the company's name, mailing address, phone number, etc.
- Print the company's name in the " " space; next to "Date" print the month/day/year the policy is being signed; record the signature of the company's Chief Executive Officer, President or Chairperson in the space next to "by" and print the full first and last name and position title of the official signing the policy.
- Print the DBE Liaison's full name, email address, business mailing address and phone number the bottom of email.

E-mail the completed and signed DBE AA Plan to: **eeoforms@dot.state.fl.us**.

The Department will review the policy, update department records and issue a notification of approval or disapproval; a copy of the submitted plan will not be returned to the contractor.

## **Attachment 3**

### **INSTRUCTIONS FOR REPORTING ACTUAL PAYMENTS**

To comply with 49 Code of Federal Regulations (CFR) Part 26, the Department is also required to collect actual payments made to Subcontractors and Subconsultants in addition to the planned DBE participation. The Local Agency is required to report data on actual payments, minority status, and the type of work of all Subcontractors, Subconsultants, and major Suppliers. Each month the Local Agency must report actual payments to all DBE Subcontractors, Subconsultants, and Suppliers. Payments to all non-DBE Subcontractors and Subconsultants can be reported either monthly or at the end of the project. Local Agency may submit this information to the District LAP Administrator or designee manually or electronically in an Excel spreadsheet. This information will be forwarded to Joseph Salib, DBE Program Analyst at [Joseph.Salib@dot.state.fl.us](mailto:Joseph.Salib@dot.state.fl.us).

NOTE: It is extremely important that the Contractor submits the "Anticipated DBE Participation Statement" at the preconstruction conference for all Federally-funded projects to the Local Agency. This primary information is used by the Federal Government to evaluate the Department's performance in the DBE Program.



**FLORIDA DEPARTMENT OF TRANSPORTATION  
BID OPPORTUNITY LIST**

**Attachment 4  
FORM #275-030-10**

Please complete and mail or fax to:  
Equal Opportunity Office  
605 Suwannee St., MS 65  
Tallahassee, FL 32399-0450  
TELEPHONE: (850) 414-4747  
FAX: (850) 414-4879

This information may also be included in your bid or proposal package.

Prime Contractor/Consultant: \_\_\_\_\_

Address/Telephone Number: \_\_\_\_\_

Bid/Proposal Number: \_\_\_\_\_

Quote Submitted MM/YR: \_\_\_\_\_

49 CFR Part 26.11

The following is intended to be a listing of all firms that are participating, or attempting to participate, on Department-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on Department-assisted projects, including both DBEs and non-DBEs. For consulting companies, this list must include all Subconsultants contacting the Local Agency and expressing an interest in teaming with the Local Agency on a specific Department- assisted project. Prime Contractors and Consultants must provide information for N umbers1, 2, 3, and 4 and should provide any information they have available on Numbers 5, 6, 7,and 8 for themselves, and their Subcontractors and Subconsultants.

1. Federal Tax ID Number: _____ 2. Firm Name: _____ 3. Phone: _____ 4. Address: _____ _____ _____ _____ 5. Year Firm Established: _____	6. <input checked="" type="checkbox"/> DBE <input type="checkbox"/> Non-DBE  7. <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant	8. Annual Gross Receipts <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> Between \$1 - \$5 million <input type="checkbox"/> Between \$5 - \$10 mil ion <input type="checkbox"/> Between \$10 - \$15 million <input type="checkbox"/> More than \$15 million
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1. Federal Tax ID Number: _____ 2. Firm Name: _____ 3. Phone: _____ 4. Address: _____ _____ _____ _____ 5. Year Firm Established: _____	6. <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE  7. <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant	8. Annual Gross Receipts <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> Between \$1 - \$5 million <input type="checkbox"/> Between \$5 - \$10 mil ion <input type="checkbox"/> Between \$10 - \$15 million <input type="checkbox"/> More than \$15 million
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1. Federal Tax ID Number: _____ 2. Firm Name: _____ 3. Phone: _____ 4. Address: _____ _____ _____ _____ 5. Year Firm Established: _____	6. <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE  7. <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant	8. Annual Gross Receipts <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> Between \$1 - \$5 million <input type="checkbox"/> Between \$5 - \$10 mil ion <input type="checkbox"/> Between \$10 - \$15 million <input type="checkbox"/> More than \$15 million
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## **RESOURCES**

### **Florida Department of Transportation Equal Opportunity Office**

<http://www.dot.state.fl.us/equalopportunityoffice/>

### **49 CFR Part 26**

<http://www.dotcr.ost.dot.gov/asp/dbe.asp>

### **Bid Opportunity List**

<http://formserver.dot.state.fl.us/MiscRepository/forms/27503010.pdf>

### **Disadvantaged Business Enterprise Directory**

<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

### **Federal Highway Administration**

<http://www.fhwa.dot.gov/>

SECTION 1: PROJECT IDENTIFICATION				
1. Financial Project No.	2. F.A.P. No.	3. FDOT LAP Contract No.	4. County	5. District or Name of Local Agency
6. Prime Contractor's Name				
7. Company Name of Contractor, Supplier, Rental Company or Agency Submitting this certification				8. FEID No of Co. in Box 7
SECTION 2: CERTIFICATION STATEMENTS				
CERTIFICATION OF NONSEGREGATED FACILITIES		CERTIFICATION OF NON DISCRIMINATION		
<p>As a federally assisted construction contractor, I hereby certify: the following for this company:</p> <p>A. This company does not maintain or provide any segregated facilities for employees at any of our establishments and we do not permit our employees to perform their services at any location, under our control, where segregated facilities are maintained.</p> <p>B. Agreement that a breach of this certification is a violation of the equal opportunity clause in this contract.</p> <p>C. We will obtain and retain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause.</p> <p>As used in this certification, the terms "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and fountains, recreation or entertainment area, transportation, and housing facilities provided for employees which are segregated by explicit directives or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or any other reason.</p>		<p>As a contractor, sub recipient or subcontractor on a Federally funded contract, this company certifies that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of such contracts.</p> <p>The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. The company agrees that a failure to carry out these requirements is a material breach of contract, which may result in the contract's termination or such other remedy as the recipient deems appropriate.</p> <p>Each subcontract, rental agreement and or material supplier agreement this company subsequently enters into for this contract will require this same Certification.</p> <p>It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Actions include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship, pre apprenticeship, and/or on-the-job training.</p> <p>This certification extends to the project identified above and affirms our commitment to insure nondiscrimination and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions of FHWA-1273.</p> <p>Compliance with Title VI of the Civil Rights Act and the provisions of the American Disabilities Act of 1990 are incorporated in this certification.</p>		
9. Name ( first/last) of corporate Official signing Certification		10. Job Title of person named in Box 9		

11. Signature of Certifying Official	12. Date of Signature

## **Certification of Non Segregation & Non Discrimination Instructions for Completing Form**

This form is provided to contractors on federally assisted road and bridge construction projects to affirm their commitment to nondiscrimination and non segregated facilities during the term of a contract.

**Box 1: Fin. Proj No.** – The Financial Project Number

**Box 2: FAP No.** – The Federal Aid Project Number assigned to federally funded projects or ‘non-FAP’

**Box 3: FDOT LAP Contract No.** – The project’s Local Area Project (‘LAP’) number

**Box 4: County** – County or counties project work is being performed in

**Box 5: District or Local Agency** – The Department’s District Number Designation where the project is located  
Districts are 1-7, and the Turnpike District or the name of the city, county or entity administering the contract

**Box 6: Prime Contractor Name** – The name of the prime contractor.

**Box 7: Company Name of Contractor, Supplier, Rental Company or Agency Submitting this certification** –  
name of company submitting the certification

**Box 8: FEID No.** – Federal Identification Number of company named in Box 7

**Box 9: Name (first, last (of corporate official signing certification.** – First name, last name

**Box 10: Job Title of person named in Box 9** – job title

**Box 11: Signature of Certifying Official** – signature of person named in Box 9

**Box 12: Date of signature** – Month/day/year of signature

## Attachment 5

For bids to be received on \_\_\_\_\_  
(Letting Date)

Fill in your FDOT Vendor Number

VF \_\_\_\_\_  
\_ \_ \_

(Only applicable to FDOT pre-qualified contractors)

### CERTIFICATE

I hereby certify that the amount of any proposal submitted by this bidder for the above letting does not exceed the amount of the Firm's CURRENT CAPACITY (maximum capacity rating less total uncompleted work).

The total uncompleted work as shown on  
the "Status of Contracts on Hand" report (page 2)

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

I further certify that the "Status of Contracts on Hand" report (page 2) was prepared as follows:

1. If the letting is before the 25<sup>th</sup> day of the month, the certificate and report reflect the uncompleted work as of the 15<sup>th</sup> day of the month, last preceding the month of the letting.
2. If the letting is after the 25<sup>th</sup> day of the month, the certificate and report reflects the uncompleted work in progress as of the 15<sup>th</sup> day of the month of the letting.
3. All new contracts (and subcontracts) awarded earlier than five days before the letting date are included in the report and charged against our total rating.

I certify that the information above is correct.

\_\_\_\_\_  
NAME OF FIRM

Sworn to and subscribed this day \_\_\_\_\_ By: \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Title

(Furnish complete information about all your contracts, whether prime or subcontracts; whether in progress or awarded, but not yet begun; and regardless of whom contracted with.)

1	2	3	4	5	6	
PROJECTS OWNER, LOCATION AND DESCRIPTION	CONTRACT (OR SUBCONTRACT) AMOUNT	AMOUNT SUBLET TO OTHERS	BALANCE OF CONTRACT AMOUNT	UNCOMPLETED AMOUNT TO BE DONE BY YOU		
				AS PRIME CONTRACTOR	AS SUBCONTRACTOR	
NOTE: Columns 2 and 3 to show total contract (or subcontract) amounts. Column 4 to be difference between columns 2 and 3. Amount in columns 5 or 6 to be uncompleted portion of amount in column 4. All amounts to be shown to nearest \$100. The Contractor may consolidate and list as a single item all contracts which, individually, do not exceed 3% of total, and which, in the aggregate, amount to less than 20% of the total.			TOTALS	\$0.00	\$0.00	
			TOTAL UNCOMPLETED WORK ON HAND TO BE DONE BY YOU (TOTAL COLUMNS 5 AND 6)		\$0.00	

**DIVISION 0 - SECTION 00250**  
**GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS**  
**ITB 19-030**

- A. All Bidding Documents shall become the property of the County.
1. Compliance with Florida Statutes Section 287.087, on Drug Free Workplace, Section 287.133(2)(a), on Public Entity Crimes, Section 287.134, on Discrimination, Florida Statutes. Preference to businesses with drug free workplace programs. In order to have a drug free workplace program, a business shall:
    - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
    - b. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
    - c. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
    - d. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
    - e. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
    - f. Make a good faith effort to continue to maintain a drug free workplace through implementation of this section.
  2. Section 287.133, Florida Statutes. Public entity crime; denial or revocation of the right to transact business with public entities:
    - (2)(a) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess

of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

3. Section 287.134, Florida Statutes. Discrimination; denial or revocation of the right to transact business with public entities:

(2)(a) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

CERTIFICATIONS OF COMPLIANCE WITH THE ABOVE-REFERENCED STATUTES ARE LOCATED IN SECTION 00160, AND MUST BE INCLUDED WITH THE BID, SIGNED AND NOTARIZED.

- B. Bids are due and must be received in accordance with the instructions given in Section 00010 and 00100 of this ITB.
- C. Owner will not reimburse Bidder(s) for any costs associated with the preparation and submittal of any Bid.
- D. Bidders, their agents and associates shall NOT solicit any County official. Bidders, their agents and associates shall NOT contact any County official other than the individual(s) listed in Article 23 of Section 00100 of this ITB for additional information and clarification.
- E. Due care and diligence has been exercised in the preparation of this ITB and all information contained herein is believed to be substantially correct; however, the responsibility for determining the full extent of the service required rests solely with those making response. Neither Owner nor its representatives shall be responsible for any error or omission in the Bids submitted, nor for the failure on the part of the Bidders to determine the full extent of the exposures.
- F. All timely responses meeting the specifications set forth in this ITB will be considered. However, Bidders are cautioned to clearly indicate any deviations from these specifications. The terms and conditions contained herein are those desired by Owner and preference will be given to those Bids in full or substantially full compliance with them.
- G. Each Bidder is responsible for full and complete compliance with all laws, rules and regulations including those of the Federal Government, the State of Florida and the County of Highlands. Failure or inability on the part of the Bidder to have complete knowledge and intent to comply with such laws, rules and regulations shall not relieve the Bidder from its obligation to honor its Bid and to perform completely in accordance with its Bid.
- H. County, at its discretion, reserves the right to waive minor informalities or irregularities in any Bids, to reject any and all Bids in whole or in part, with or without cause, and to accept that Bid, if any, which in its judgment will be in its best interest.
- I. Award will be made to the Bidder whose Bid is determined to be the most advantageous to Owner, taking into consideration those Bids in compliance with the requirements as set forth in this ITB. The



Board reserves the right to reject any and all Bids for any reason or make no Award whatsoever or request clarification of information from the Bidders.

- J. Any interpretation, clarification, correction or change to this ITB will be made by written addendum issued by the Purchasing Division. Any oral or other type of communication concerning this ITB shall not be binding.
- K. Bids must be signed by an individual of the Bidder's organization legally authorized to commit the Bidder to the performance of the product(s) and/or service(s) contemplated by this ITB.
- L. The insurance requirements of Paragraphs 6.02, 6.03, and 6.06 of the Standard General Conditions, as amended by the Supplementary Conditions, found in Sections 00700 and 00800 of this ITB must be satisfied before delivery of goods and performance of services.
- M. If submitting a Bid for more than one ITB, each Bid must be in a separate envelope and correctly marked. Only one (1) Bid per project shall be accepted from any person, corporation or firm. Modifications will not be accepted or acknowledged.
- N. If the successful Bid is greater than two hundred thousand dollars (\$200,000.00), a Public Construction Bond will be required. Awarded Bidder must record Public Construction Bond at the Clerk's Recording Department and comply with Section 255.05, Florida Statutes. All Bonds must be in a form acceptable to Owner and County Attorney.
- O. Each Bid must contain proof of enrollment in E-Verify.
- P. Board policy prohibits any County employee or members of their family from receiving any gift, benefit, and/or profit resulting from any contract or purchase. Board policy also prohibits acceptance of gifts of any kind with the exception of advertising novelties valued less than ten dollars (\$10.00).
- Q. Construction Projects that are awarded for less than two hundred thousand dollars (\$200,000.00) and without a Public Construction Bond require the following provisions:
  - 1. At any time prior to final completion of the Contract, Owner will not authorize or make payment to the Contractor in excess of ninety percent (90%) of the amount due on the Contract on the basis of the Work suitably completed.
  - 2. In case of the default by the Contractor, the laborers, materialmen, and Subcontractors, as defined in Section 713.01, Florida Statutes, making claims for unpaid bills, may be paid from the ten percent (10%) retainage.
  - 3. The final payment of retainage shall not be made until: (1) the Project has been inspected by the Project Manager or other person designated by the County for the purpose; (2) Project Manager or other designated person has issued a written certificate that the Project has been constructed in accordance with the approved Construction Documents and approved Change Orders; (3) the County has accepted the Project; and (4) the Contractor has supplied the County with signed and dated statements from all laborers, materialmen, and subcontractors as defined in Section 713.01, Florida Statutes, and identified under subparagraph (d) of this paragraph 2, that they

have no claims against the Contractor for the Work under the Contract. Said statements shall identify the Project by name and Project number.

4. The Contractor, before beginning Work or within two (2) workdays thereafter, shall post in a conspicuous place on the Site the following notice.

“Notice is hereby made to all those concerned and affected that

\_\_\_\_\_ (Contractor’s Name) is performing the  
**Thunderbird East and Thunderbird West Sidewalk Extensions**  
**Highlands County Project No. 15008 & 15010**

All parties furnishing labor and/or materials to said project must, within twenty (20) days of first providing such labor and/or materials, deliver notice of such in writing, by certified mail, returned receipt requested, to:

HIGHLANDS COUNTY BOARD OF COUNTY COMMISSIONERS  
ENGINEERING DEPARTMENT  
ATTN: James D. Langford  
505 S. COMMERCE AVE., SEBRING, FLORIDA 33870

5. The Contractor shall provide a certified list of all Subcontractors, laborers, and material suppliers to the Owner or Designee within thirty (30) days of receiving the Notice to Proceed with the Work. This list shall be updated thereafter each month with a certified statement that the list and its updates include the names and address of all Subcontractors, laborers, and material suppliers furnishing labor and/or material for the Project.
  6. The Contractor shall provide a written statement with each pay request to the Project Manager which indicates how each payment will be distributed. This pay request breakdown shall define the disbursement intended for all the funds requested. When the Contractor receives any payment it shall pay such moneys received to each Subcontractor and material supplier as set forth in that written statement.
  7. The Contractor shall provide a written statement with all but the first payment request from each of the Subcontractors, laborers, and material suppliers indicated in paragraph 5 of this Section R that they have in fact received payment as indicated in paragraph 6 of this Section R. In the event a payment is not made as indicated on a prior written statement provided pursuant to paragraph 5 of this Section R, the Contractor shall furnish an explanation as to the reasons for such deviation and shall request approval from the Project Manager.
- R. Late Bids will not be accepted under any circumstances. If Bids are received after the scheduled time of the Bid Opening Meeting, the Bidder will be contacted for disposition. The Purchasing Division, at the Bidder’s expense, can return the unopened envelope, or, at the Bidder’s request, in writing, can destroy it.
- S. Electronically submitted Bids and faxed Bids will not be accepted. Any blank spaces on the required Bid Form or the absence of required submittals or signatures may cause the Bid to be declared non-responsive.
- T. The County is not responsible for correcting any errors or typos made on the Bid response. Incorrect calculations may cause the Bid to be declared non-responsive.
-

- U. Minority Owned and Women owned businesses must submit a copy of the certificate to receive credit.
- V. The Bidder shall comply with the Florida Sales and Use Tax Law as it may apply to this Contract. The quoted amount(s) shall include any and all Florida Sales and Use Tax payment obligations required by Florida Law of the successful Bidder and/or its Subcontractors or material suppliers.
- W. Public Records: Any material submitted in response to this ITB will become Public Record pursuant to Section 119(1)(b) and (c), Florida Statutes.
- X. All pages included in or attached by reference to this ITB shall be called and constitute the Invitation to Bid.
- Y. The Contractor agrees to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes as shown below.
  - (5) It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Beginning July 1, 2015, each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will comply with this subsection.
- aa. The applicable Articles and Sub articles of the Construction Details and Materials divisions (Division II & III) of the July 2019 Edition of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction shall be followed.

**SECTION 00300  
BID FORM**

PROJECT IDENTIFICATION:	Bid No.: ITB 19-030 THUNDERBIRD EAST & THUNDERBIRD WEST SIDEWALK EXTENSIONS
CONTRACT IDENTIFICATION & NO.:	HCBCC Project No.: 15009 & 15010 LAP Project 431343-1-38-01 & 433203-1-38-01
THIS BID IS SUBMITTED TO:	Highlands County BOCC Attn: Purchasing Department 600 S. Commerce Avenue Sebring, FL 33870

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into a CONTRACT with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for (35) thirty-five days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the CONTRACT with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the CONTRACT, that:
  - (a) BIDDER has examined and carefully studied the Bidding Documents and the following Addenda (receipt of all which is hereby acknowledged):

<u>Date</u>	<u>Number</u>	<u>Date</u>	<u>Number</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;
- (c) BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- (d) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Section 00800 Supplementary Conditions as provided in paragraph SC-5.03.C of Section 00700 Standard General Conditions. BIDDER accepts the determination set forth in paragraph SC-5.03.C of Section 00800 Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in paragraph 5.03.C of Section 00700 Standard General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER's purposes. BIDDER acknowledges that OWNER and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.
- (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract

Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.

(h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

4. Should changes in the work occur, the unit prices submitted shall be used, except where the Contractor can document materials price increases to the satisfaction of the OWNER.
5. This is a Lump Sum Contract with only one pay item listed in the Contract.

All references to payment under individual pay item numbers, regardless of where those references are contained in the Contract Documents or when in time any such pay item reference is incorporated in the Contract Documents, are superseded by this Special Provision.

Pay adjustments as shown in the Contract Documents, regardless of where those pay adjustments are referenced, shall not apply.

The following unit prices are to be provided by the BIDDER. They may be used by the OWNER to establish the value (increase or decrease in Contract price) of changes in the Work. The BIDDER shall be responsible for verification of quantities. This is a Lump Sum Bid.

**BIDDER agrees to hold the unit prices for \_\_\_\_\_calendar days.**

## **TABULATION OF QUANTITIES**

**(next page)**

(this portion of page blank)

## Thunderbird East Sidewalk Extension

No.	Description	Quantity	Units	Unit Cost	Item Cost
<b>I.</b>	<b>General</b>				
1	Mobilization	1	LS		
2	Bonds & Insurance	1	LS		
3	Construction Survey Staking Including As-Builts	1	LS		
4	Testing	1	LS		
5	Maintenance of Traffic	1	LS		
<b>II.</b>	<b>Construction</b>				
	Sediment Barrier Temporary	300	LF		
6	Clearing and Grubbing (Including removal of trees within the R/W)	1	LS		
7	Removal of Existing Asphalt Pavement (Roadway)	81	SY		
8	Mailbox Remove and Relocate	1	EA		
9	Regular Excavation	1	LS		
10	Stabilization, Type B, LBR 40, 12" Compacted Thickness Shoulder & Side Street Construction	1,400	SY		
11	Optional Base, Base Group 6, 8" Compacted Thickness	100	SY		
12	Superpave Asphaltic Concrete, 1-1/2" Thick, RAP 30% Maximum	8	TN		
13	Inlet, Ditch Bottom, Type C	16	EA		
14	Manhole	1	EA		
15	18" x 12" Reinforced Concrete Pipe (RCP)	48	LF		
16	15" Reinforced Concrete Pipe (RCP)	40	LF		
17	15" High Density Polyethylene Pipe (HDPE)	1,360	LF		
18	18" High Density Polyethylene Pipe (HDPE)	10	LF		
19	Mitered End Section	3	EA		
20	Concrete Dissimilar Collar	2	EA		
21	Concrete Sidewalk, 4" Thick, 3,000 PSI Min	920	SY		
22	Concrete Drainage Structure, See Details	2	EA		
23	Detectable Warning, Yellow, Embedded	140	SF		
24	Performance Turf (Sod)	4,200	SY		
<b>III.</b>	<b>Pavement Markings and Signage</b>				
25	Single Post Sign, F&I, Stop (R1-1), 30"x30" & Two (2), D3-1	6	AS		
26	Single Post Sign, F&I, Speed Limit, 45 MPH, (R2-1), 24"x30"	1	AS		
28	Temporary Painted Pavement Markings, STD, White, Solid, 12"	400	LF		
29	Temporary Painted Pavement Markings, STD, White, Solid, 24"	70	LF		
30	Thermoplastic, STD, White, Solid, 12"	400	LF		
31	Thermoplastic, STD, White, Solid, 24"	70	LF		
<b>SUB TOTAL AMOUNT FOR THUNDERBIRD EAST SIDEWALK EXTENSION</b>					\$
Written in Words:					

## Thunderbird West Sidewalk Extension

No.	Description	Quantity	Units	Unit Cost	Item Cost
<b>I.</b>	<b>General</b>				
1	Mobilization	1	LS		
2	Bonds & Insurance	1	LS		
3	Construction Survey Staking Including As-Builts	1	LS		
4	Testing	1	LS		
5	Maintenance of Traffic	1	LS		
<b>II.</b>	<b>Construction</b>				
6	Sediment Barrier Temporary	1,800	LF		
7	Clearing and Grubbing (Including removal of trees within the R/W)	1	LS		
8	Removal of Existing Asphalt Pavement (Roadway)	110	SY		
9	Mailbox Remove and Relocate	7	EA		
10	Regular Excavation	1	LS		
11	Stabilization, Type B, LBR 40, 12" Compacted Thickness Shoulder & Side Street Construction	2,150	SY		
12	Optional Base, Base Group 6, 8" Compacted Thickness	385	SY		
13	Superpave Asphaltic Concrete, 1-1/2" Thick, RAP 30% Maximum	12	TN		
14	Inlet, Ditch Bottom, Type C	7	EA		
15	18" x 12" Reinforced Concrete Pipe (RCP)	50	LF		
16	15" Reinforced Concrete Pipe (RCP)	10	LF		
17	15" High Density Polyethylene Pipe (HDPE)	640	LF		
18	18" High Density Polyethylene Pipe (HDPE)	10	LF		
19	Mitered End Section	8	EA		
20	Concrete Collar	1	EA		
21	Concrete Sidewalk, 4" Thick, 3,000 PSI Min	1,350	SY		
22	Concrete Driveway, 6" Thick, Include 6"x6"W1.4WWM, 3,000 PSI Min.	270	SY		
23	Concrete Drainage Structure, See Details	1	EA		
24	Detectable Warning, Yellow, Embedded	80	SF		
25	Performance Turf (Sod)	6,000	SY		
<b>III.</b>	<b>Pavement Markings and Signage</b>				
26	Single Post Sign, F&I, Stop (R1-1), 30"x30" & Two (2), D3-1	3	AS		
27	Single Post Sign, F&I, W1-1R 30"x30" & W13-1P (15 MPH) 18"x18"	1	AS		
28	Temporary Painted Pavement Markings, STD, White, Solid, 12"	170	LF		
29	Temporary Painted Pavement Markings, STD, White, Solid, 24"	27	LF		
30	Thermoplastic, STD, White, Solid, 12"	170	LF		
31	Thermoplastic, STD, White, Solid, 24"	27	LF		
<b>SUB TOTAL BID AMOUNT FOR WEST THUNDERBIRD SIDEWALK EXTENSION</b>					<b>\$</b>

Written in Words:



TOTAL BID AMOUNT:

Thunderbird East Sub Total Amount + Thunderbird West Sub Total Amount =

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

\_\_\_\_\_  
(Words)

6. (a) Bidder agrees that work as bid above on the College Dr/Memorial Dr Multi-Use Path Project will be substantially complete within **210** calendar days after the date when the Contract Times commence to run as provided in paragraph 2.03 of Section 00700 the Standard General Conditions and completed and ready for final payment in accordance with paragraph 14.13 of Section 00700 of the Standard General Conditions within **240** calendar days after the date when the Contract Times commence to run.
7. The following documents are attached to and made a condition of this Bid:
- (a) Required Bid Bond, if applicable, in the form of\_\_\_\_\_.
  - (b) Required BIDDER's Qualification Statement with supporting data.
  - (c) A tabulation of Subcontractors.
  - (d) A current copy of Bidders' Certificate of Insurance and statement of their ability to acquire the insurance limits and requirements stated in Section 00250, Item-M of this Bid.
  - (d) Certificate of Insurance for both CONTRACTOR and any Subcontractors (if applicable).
  - (e) Acknowledgment of the Addenda (if applicable).
  - (f) A list of a minimum of (5) five jobs similar in scope and size.
  - (g) A minimum of five (5) references of clients for whom similar work has been performed.
  - (h) A schedule of values for all the work in the Bidder's Lump Sum bid, which includes the item, quantities, unit, unit prices and extended total price, which when added together equals the lump sum bid price. This schedule shall be in sufficient detail, acceptable to the Owner, to serve as the basis for progress payments. Such prices shall include overhead and profit applicable to each item of work.
  - (l) One (1) original (signed in blue ink) and three (3) copies of the submitted bid.
  - (h) Proof of enrollment in E-Verify

8. Communications concerning this Bid shall be addressed to the contacts with an email copy sent to General Services / Purchasing contacts above: listed in Section 00100, Article 23.
9. Terms used in this Bid which are defined in Sections 00250, 00700, 00800 or Instructions to Bidders Section 00100 will have the meanings indicated in each or all of the indicated Sections.

SUBMITTED on \_\_\_\_\_, 2019

State Contractor License No. \_\_\_\_\_.  
(Include a copy with your Bid Submittal)

If Bidder is:

An Individual

By: \_\_\_\_\_ (SEAL)  
(Individual's Name)

doing business as \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

A Partnership

\_\_\_\_\_ (SEAL)  
(Firm Name)

\_\_\_\_\_  
(State in which organized and type of Partnership)

By: \_\_\_\_\_  
(General Partner)

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

A Corporation

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
(Corporation Name)

\_\_\_\_\_  
(State of incorporation)

By: \_\_\_\_\_  
(name of person authorized to sign)

\_\_\_\_\_  
(title)

(Corporate Seal)

Attest: \_\_\_\_\_  
(secretary)

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Date of Qualification to do business is \_\_\_\_\_

A Joint Venture

By: \_\_\_\_\_ (name) \_\_\_\_\_ (seal)

\_\_\_\_\_  
(address)

By: \_\_\_\_\_ (name) \_\_\_\_\_ (seal)

---

(address)

Phone Number and Address for receipt of official communications:

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(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

END OF SECTION

**SECTION 00410  
BID BOND**

STATE OF FLORIDA  
COUNTY OF HIGHLANDS

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
\_\_\_\_\_(hereinafter called "Principal"), and \_\_\_\_\_  
\_\_\_\_\_as Surety, (hereinafter called "Surety"), are held and firmly bound unto the  
Highlands County, a political subdivision of the State of Florida (hereinafter called  
"Owner"), in the sum of \_\_\_\_\_Dollars (\$\_\_\_\_\_),  
lawful money of the United States of America, for the payment of which sum well and truly  
to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly  
and severally, firmly by these presents:

WHEREAS, the "Principal" contemplates submitting or has submitted a bid to the  
said "Owner" for Bid #19-030.

**THUNDERBIRD EAST & THUNDERBIRD WEST SIDEWALK  
EXTENSIONS, HIGHLANDS COUNTY PROJECTS NO. 15009 & 15010**

WHEREAS, it was a condition precedent to the submission of said bid that a  
certified check or bid bond in the amount of not less than five percent (5%) of the amount  
of bid be submitted with said bid as a guarantee that the Bidder would, if awarded the  
contract, enter into a written contract with the "Owner" within fifteen (15) consecutive  
calendar days after having been given notice of the award of the contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if  
the bid of the "Principal" herein be accepted and said "Principal", within fifteen (15)

consecutive calendar days after notice being given of such acceptance, enter into a written contract with the "Owner", then this obligation shall be void; otherwise, the sum herein stated shall be due and payable to the "Owner", and the "Surety" herein agrees to pay said sum immediately upon demand of said "Owner", in good and lawful money of the United States of America; as liquidated damages for failure thereof said "Principal".

IN WITNESS WHERE OF, the said \_\_\_\_\_, as "Principal" herein, has caused these presents to be signed in its name by its \_\_\_\_\_ and attested by its \_\_\_\_\_ under its corporate seal, and the said \_\_\_\_\_ as "Surety" herein, has caused these presents to be signed in its \_\_\_\_\_ and attested by its \_\_\_\_\_ under its corporate seal, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20 \_\_\_\_.

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

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_

CONTRACTOR, AS PRINCIPAL:

\_\_\_\_\_  
By: \_\_\_\_\_ (Seal)

Title: \_\_\_\_\_

AS SURETY:

\_\_\_\_\_  
By: \_\_\_\_\_ (Seal)

Title: \_\_\_\_\_

**DIVISION 0 - SECTION 00500**  
**AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Highlands County, a political subdivision of the State of Florida, 600 South Commerce Avenue, Sebring, Florida 33870 (hereinafter called "Owner") and \_\_\_\_\_, a \_\_\_\_\_ company (hereinafter called "Contractor"). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1 - Work**

Contractor shall provide all labor, materials, and equipment to construct the **"Thunderbird East & West Sidewalk Project No. 15009 & 15010"**. Contractor shall complete the Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work consists of installing approximately 4,399 linear feet of 5' concrete sidewalk, concrete driveways, grading roadside swales and installation of various drainage structures.

The work consists of installing approximately 4,399 linear feet of 5' concrete sidewalk, concrete driveways, grading roadside swales and installation of various drainage structures.

The principal features, as defined above, are not intended to cover every aspect of the Project details. Contractor shall be responsible for reviewing the Contract Documents to determine the full scope of the Work and specific requirements of the Project, which include familiarity and compliance with all Laws and Regulations.

**Article 2 - Engineer and County Project Manager**

- 2.01 The Engineer of Record (hereinafter called "Engineer") for this project is James D. Langford, Jr., P.E., Assistant County Engineer for the Highlands County Board of County Commissioners.
- 2.02 The County Project Manager is James D. Langford, Jr., P.E., Assistant County Engineer for the Highlands County Board of County Commissioners.
- 2.03 The Construction Engineering and Inspection (CEI) Engineer will be \_\_ (to be determined) \_\_\_\_\_.

**Article 3 - Contract Times**

- 3.01 CONTRACTOR agrees that the Work will be substantially complete within 210 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.03 of Section 00700 General Conditions and completed and ready for final payment in accordance with paragraph 14.07 of Section 00700 Standard General Conditions within 240 days after the date when the Contract Times commence to run. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of this Agreement.
- 3.02 Liquidated Damages
  - A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.01 of this Article. In agreeing upon the daily liquidated damages amount stated

in this paragraph, Owner and Contractor have considered the original Contract Price stated in Article 4 of this Agreement, the average construction, engineering, and inspection costs experienced by Owner, and anticipated costs of project-related delays and inconveniences to Owner and the public. Owner and Contractor also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (and not as a penalty) Contractor shall pay Owner **One-Thousand One Hundred Forty-Eight Dollars (\$1,148.00)** for each day that expires after the time specified in paragraph 3.01 of this Article until the Work is completed and ready for final payment. Liquidated damages shall be deducted by Owner from any balance due Contractor or, if the balance due Contractor is less than the amount of liquidated damages, Contractor shall pay to Owner the remaining unpaid liquidated damages within thirty (30) days after Owner's invoice is sent to Contractor.

- B. Owner does not waive its right to liquidated damages due under this Agreement by allowing Contractor to continue and to finish the Work, or any part of it, after the expiration of the Contract Time including granted time extensions.
- C. In the case of a default of this Agreement and the completion of the Work by Owner, Contractor and Contractor's surety are liable for the liquidated damages under this Agreement, but Owner will not charge liquidated damages for any delay in the final completion of Owner's performance of the Work due to any unreasonable action or delay on the part of Owner.

#### Article 4 - Contract Price

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amount determined pursuant to paragraph 4.01 below:

- 4.01 For all Work as listed on the Bid Form and described in the Drawings and Specifications, as Exhibit "A", attached hereto and included herein by this reference, a Lump Sum of:

---

[USE WORDS]

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[USE FIGURES]

Contractor has included all costs in the Contract Price and shall cause the Work to be completed for the Contract Price.

#### Article 5 - Payment Procedures



- 5.01 Deliverables must be received and accepted in writing by the CEI Engineer prior to reimbursements. Supporting documentation with the invoices must establish that the deliverables were received and accepted in writing by the CEI Engineer. Contractor may receive progress payments for deliverables based on the Contractor's Schedule of Values and on a percentage of services that have been completed, approved, and accepted to the satisfaction of Owner when properly supported by detailed invoices and acceptable evidence of payment. All costs charged to the Project by Contractor shall be supported by detailed invoices, proof of payments, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- 5.02 Progress Payments; Retainage: Contractor shall deliver Contractor's Applications for Payment to CEI Engineer on or before the third (3rd) day of each month. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by CEI Engineer, on or about the fifteenth (15th) day of each month during construction as provided in paragraphs 5.2.A and 5.2.B below.
- A. Prior to fifty percent (50%) of the Work being completed, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as Project Manager shall determine, or Owner may withhold. Owner will withhold ten percent (10%) of each application for progress payment until:
- 50 % of the Work is completed, and
- 0 % of materials and equipment not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to the Owner).
- B. After fifty percent (50%) of the Work is completed, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as Project Manager shall determine, or Owner may withhold. Owner will withhold five percent (5%) of each application for progress payment until:
- 100 % of the Work is completed, and
- 100 % of materials and equipment not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to the Owner).
- 5.03 Final Payment: Upon completion of the Work, Contractor shall notify Owner in writing of the completion. The certification shall state that the Work has been completed in compliance with the Drawings and Specifications. If any deviations are noted from the approved Drawings and Specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation. After Contractor has, in the opinion of CEI Engineer, satisfactorily completed all corrections identified during the final inspection and deviations not accepted by Owner and has delivered to Owner, in accordance with the Contract Documents, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, permits, marked-up record documents, paper final as-built Drawings and Specifications, signed, sealed, and certified by a Professional Surveyor, registered in the State of Florida, and all applicable permits, final releases from Contractor and all Subcontractors and Suppliers at every level, all warranties, and all other documents reasonably required by Owner pertaining to the Work, and provided verification of compliance with the requirements of Article 13 of this Agreement, Contractor may make application for final payment.

## **Article 6 - Contractor's Representations**

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 6.01 Contractor has examined and carefully studied the Contract Documents (including any Addendum) and the other related data identified in the ITB 19-030 Documents.
- 6.02 Contractor has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.
- 6.03 Contractor is familiar with and will comply with all Laws and Regulations, whether or not the Laws or Regulations may affect cost, progress, performance and furnishing of the Work.
- 6.04 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities). Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Project Manager do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.05 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- 6.06 Project Manager has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports, Drawings and Specifications identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.07 Contractor has not given Project Manager written notice of any conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents, and Contractor agrees that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 6.08 Contractor certifies by signing this Agreement that no Commissioner or employee of the Highlands County Board of County Commissioners has solicited or accepted gratuities, favors, or anything of monetary value from Contractor or parties to subcontracts. Contractor and Subcontractors shall not pay any gratuities, favors, or anything of monetary value to any Commissioner or employee of the Highlands County Board of County Commissioners.

## **Article 7 - Contract Documents**

The Contract Documents which comprise the entire Contract between Owner and Contractor concerning the Work consist of the following:

- 7.01 This Agreement (pages 00500-1 to 00500-14, inclusive).
- 7.02 REQUIREMENTS FOR LOCAL AGENCY PROGRAM CONSTRUCTION PROJECTS,
- 7.03 ITB 19-030 Section 00800 Supplementary Conditions to EJCDC C-700 (2013 Edition).
- 7.04 The Standard General Conditions of the Construction Contract, EJCDC C-700 (2013 Edition).
- 7.05 Drawings, consisting of a cover sheet bearing the title: CONSTRUCTION PLANS FOR THUNDERBIRD EAST & THUNDERBIRD WEST SIDEWALK EXTENSIONS FINANCIAL PROJECT ID'S 431343-1-38-01 & 433203-1-38-01, inclusive with each sheet bearing the following general title: "Thunderbird East Sidewalk Extension & Thunderbird West Sidewalk Extension". These plans may or may not be attached to this CONTRACT depending on the size of the document.
- 7.06. Submitted PUBLIC CONSTRUCTION BOND,
- 7.07. GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS,
- 7.08. Submitted BID FORM,
- 7.09. PROJECT COORDINATION,
- 7.10. FIELD ENGINEERING,
- 7.11. MEASUREMENT AND PAYMENT,
- 7.12. PRECONSTRUCTION CONFERENCES,
- 7.13. STANDARDS AND MATERIALS,
- 7.14. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES,
- 7.15. COLOR AUDIO-VIDEO PRECONSTRUCTION RECORD,
- 7.16. TESTING AND LAB SERVICES,
- 7.17. PROTECTION OF WORK AND PROPERTY,
- 7.18. EROSION CONTROL,
- 7.19. CONTRACT CLOSEOUT,
- 7.20. PROJECT RECORD DOCUMENTS,
- 7.21. EARTHWORK,
- 7.22. MAINTENANCE OF TRAFFIC,
- 7.23. SODDING,
- 7.24. CONCRETE SIDEWALKS
- 7.25. CONCRETE WORK DRIVEWAY CUTTING REPLACEMENT,
- 7.26. OPTIONAL SUB BASE,
- 7.27. LAP "BIG FOUR" SPECIFICATIONS,
- 7.28. SUMMARY OF WORK,
- 7.29. The following which may be delivered or issued after the Effective Date of the CONTRACT and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 11.01 of Section 00700 Standard General Conditions.
- 7.30. Divisions 11 and 111 of the State of Florida Department of Transportation's Standard Specifications for Road and Bridge Construction, dated 2019, as amended by the included LAP Specifications Provided By Highlands County Engineering (this Project Manual's Division 2).

The documents listed in paragraphs 7.5 et seq. above are attached to and included in this CONTRACT (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 11.01 of Section 00700 General Conditions.

7.31 Except as expressly otherwise noted in this paragraph and paragraph 7.32 of this Article, there are no Contract Documents other than those listed in paragraphs 7.01 through 7.30 of this Article. In the event of a conflict among the provisions of the Contract Documents, the order of precedence shall be this Agreement, the Requirements of the Local Agency Program Construction Projects, followed by the Supplementary Conditions, followed by EJCDC C-700 (2013 Edition) and then in the order listed. The Contract Documents may only be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- (a) Written Amendment signed by both parties
- (b) Change Order signed by both parties
- (c) Work Change Directive signed by both parties

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

- (a) A Field Order issued by the Project Manager
- (b) Project Manager's approval of a Shop Drawing
- (c) Project Manager's written interpretation or clarification

7.33 All Change Orders must be reviewed and approved by FDOT.

## **Article 8 - Miscellaneous**

- 8.01 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations), and unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.02 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.03 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.04 Upon the occurrence of any event of default, all obligations on the part of Owner to make any further payments of funds pursuant to this Agreement shall, if Owner so elects, terminate but Owner may make any payments or parts of payments after the happening of any event of default without thereby waiving the right to exercise any remedy which it may have and without becoming liable to make any further payment.

- 8.05 Contractor certifies by signing this Agreement that no Commissioner or employees of the Highlands County Board of County Commissioners has solicited or accepted gratuities, favors or anything of monetary value from Contractor or of parties to subcontracts. Contractor, Subcontractors, and Suppliers shall not pay any gratuities, favors, or anything of monetary value to any Commissioner or employee of the Highlands County Board of County Commissioners.
- 8.06 No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, any state agency, Owner or Owner's elected officials, employees or agents.
- 8.07 By entering into this Agreement, Contractor agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, Owner shall be given "first priority" for all goods and services under this Agreement. Contractor agrees to provide all goods and services to Owner during and after the emergency at the terms, conditions, and prices as provided in this Agreement on a "first priority" basis. Contractor shall furnish a twenty-four (24) hour phone number to Owner in the event of such an emergency. Failure to provide the stated priority during and after an emergency shall constitute a breach of Contract and make Contractor subject to sanctions from doing further business with Owner. For purposes of this paragraph, the term "first priority" means priority over all other contracts and agreements between Contractor and any person or entity other than Owner and requires Contractor to deliver the goods and services described in this Agreement to Owner prior to providing those goods and services to any other person or entity during and after the emergency.
- 8.08 Owner shall not be obligated or liable hereunder to any person, organization or entity other than Contractor. No provision in this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person, organization or entity not a party to this Agreement, including, but not limited to, any citizen or employees of the Owner and/or Contractor.
- 8.09 In no event shall the making by Owner of any payment to Contractor constitute or be construed as a waiver by Owner of any breach of covenant or any default which may then exist, on the part of Contractor, and the making of such payment by Owner while any such breach or default exists shall in no way impair or prejudice any right or remedy available to Owner with respect to such breach or default.
- 8.10 No waiver by either Contractor or Owner with respect to any breach or default of or with respect to any provisions or conditions of this Agreement shall be deemed to constitute a continuing waiver of any other breach or default of or with respect to the same or any other provision or condition of this Agreement. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 8.11 This Agreement, including exhibits and amendments, and all matters relating to the validity, interpretation, and performance of this Agreement (whether in contract, statute, tort, or otherwise) shall be governed and construed in accordance with the laws of the State of Florida, without giving effect to principles of conflict of laws. Venue for any legal action shall lie in Highlands County, Florida, and any proceedings to enforce or interpret any provision of the Contract Documents shall be brought exclusively in a court of competent jurisdiction in Highlands County, Florida.

- 8.12 Owner is an Equal Employment Opportunity ("EEO") employer and as such encourages Contractor to voluntarily comply with EEO regulations with regards to gender, age, race, veteran status, country of origin, and creed. In addition, Contractor or anyone under its employ shall comply with all applicable Laws and Regulations thereby pertaining to the avoidance or appearance of sexual harassment or on the job discrimination. Contractor shall maintain a work environment free of discrimination or unwelcome action of a personal nature. Any subcontracts entered into shall make deference to this clause with the same degree of application being encouraged. When applicable, Contractor shall comply with all new Laws and Regulations.
- 8.13 Contractor may only subcontract a portion of the Work to a Subcontractor or Subcontractors approved in advance, in writing by Project Manager, but Contractor shall perform with its own employees and equipment work amounting to not less than forty percent (40%) of the total Contract amount.
- 8.14 This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the Project is completed and accepted and payment made by Owner or this Agreement is terminated in accordance with Article 16 of Section 00700 Standard General Conditions of the Construction Contract as modified in Section 00800 Supplementary Conditions of the Contract Documents.
- 8.15 Contractor shall be responsible for all quality control testing requirements.
- 8.16 In the event there is a discrepancy between the language of this Agreement and the Contract Documents, the provisions of this Agreement shall govern.

## **Article 9 - Dispute Resolution**

The Parties will use the following procedure to address any dispute arising under this Contract (a "Dispute").

### **9.1. Negotiation.**

- a. *Notice of claims or disputes.* All claims or disputes (hereinafter generally referred to as "contract claim(s)") by Contractor against the Owner relating to this Agreement, except bid protests, including, without limitation, breach of contract, mistake, misrepresentation, or other such claims or disputes shall be submitted in writing to the Owner's purchasing manager for initial informal review and determination.
- b. *Requested information.* During the initial review stage provided for in subsection (1) above, Contractor shall supply any additional information requested by the Owner's purchasing manager within the time period set forth in the request. Failure of Contractor to comply may result in resolution of the claim without consideration of any information which is untimely-filed pursuant to such request.
- c. *Authority of the purchasing manager to resolve formal contract claims.* The purchasing manager is authorized to resolve any claim arising out of the performance of this Agreement at any time during the contract claim process. Where otherwise required, such resolution shall be conditioned on the approval of the County Administrator or the Highlands County Board of County Commissioners.



d. *Notice to Contractor of the purchasing manager's decision.* The written decision of the purchasing manager pertaining to Contractor's formal contract claim shall be sent to the Contractor by hand delivery or certified mail, return receipt requested, or by such other means as agreed by the parties, at the notice address listed on the contract claim.

e. *Adverse decision.* If an adverse decision on the Contractor's formal contract claim has been rendered by the Owner's purchasing manager, the notice of decision shall inform the Contractor of the right to request mediation.

f. *Finality of purchasing manager's decision.* The purchasing manager's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, Contractor files a written request for mediation.

9.2 Mediation. The parties agree that they will voluntarily and in good faith participate in mediation of any controversies between them prior to and as a prerequisite of a party filing a legal proceeding unless such legal proceeding must be filed in order to avoid a contractual or statutory deadline; but in such event, the legal proceeding shall be abated until the required mediation is concluded. In the event of a controversy, the parties agree to schedule mediation to occur within forty-five (45) days of a party forwarding written notice to the other party of a controversy. The parties shall mutually agree to the selection of a mediator from the list of mediators who are authorized to mediate civil cases through the Tenth Judicial Circuit in and for Highlands County, Florida. Each party will bear its own costs of mediation, but the parties will equally share the cost of the mediator.

10.3 Litigation, Venue, and Jurisdiction. If a contract claim remains unresolved for sixty (60) days after receipt of the Notice of Mediation, the Owner may terminate this Agreement in accordance with Article 16 of the Standard General Conditions of the Construction Contract, EJCDC C-700 or either party may then submit the contract claim to a court of competent jurisdiction in in Highlands County, State of Florida. Each party irrevocably agrees to submit to the exclusive jurisdiction of the court over any claim or matter arising under or in connection with this Agreement. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Highlands County, Florida. The use of these dispute resolution procedures shall not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party.

## **Article 10 - Employment Eligibility Verification**

10.01 Definitions. As used in this Article:

- A. Employee assigned to this Agreement means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under this Agreement. An employee is not considered to be directly performing work under this Agreement if the employee:
  - (a) Normally performs support work, such as indirect or overhead functions; and
  - (b) Does not perform any substantial duties applicable to the Agreement

- B. Subcontract means any contract entered into by a Subcontractor to furnish supplies or services for performance of this Agreement or a subcontract under this Agreement. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
- C. Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for Contractor or another subcontractor.
- D. United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

10.02 Enrollment and verification requirements.

- A. Contractor must be enrolled in E-Verify at time of Contract award, and Contractor shall use E-Verify to initiate verification of employment eligibility of
  - i. All new employees
    - Enrolled thirty (30) calendar days or more. Contractor shall initiate verification of employment eligibility of all new hires of Contractor, who are working in the State of Florida, whether or not assigned to this Agreement, within three (3) business days after the date of hire; or
    - Enrolled less than thirty (30) calendar days. Within thirty (30) calendar days after enrollment in E-Verify, Contractor shall initiate verification of employment eligibility of all new hires of Contractor who are working in the State of Florida, whether or not assigned to this Agreement, within three (3) business days after the date of hire; or
  - ii. Employees assigned to this Agreement. For each employee assigned to this Agreement, Contractor shall initiate verification of employment eligibility, to the extent allowed by the E-Verify program, within thirty (30) calendar days after date of Contract award or within thirty (30) calendar days after assignment to this Agreement, whichever date is later.
- B. Contractor shall comply, for the period of performance of this Agreement, with the requirements of the E-Verify Program Memorandum of Understanding (MOU). Termination of Contractor's MOU and denial access to the E-Verify system by the Department of Homeland Security or the Social Security Administration or the U.S. Citizenship and Immigration Service is an event of default under this Agreement.

10.03 Website. Information on registration for and use of the E-Verify program can be obtained via the Internet at the U.S. Citizenship and Immigration Service's Web site: <http://www.uscis.gov>.

10.04 Individuals previously verified. Contractor is not required by this Article to perform additional employment verification using E-Verify for any employee whose employment eligibility was previously verified by Contractor through the E-Verify program.

10.05 Subcontracts. Contractor shall include, and shall require the inclusion of the requirements of this Article, including this paragraph (11.05) (appropriately modified for identification of the parties), in each subcontract that includes work performed in the United States under this Agreement.

## Article 11 - Compliance with Title VI Assurances



The Contractor, for itself, its assignees and successors in interest agrees to comply with Title VI Assurances and include the provisions in every subcontract, including procurement of materials and leases of equipment.

## Article 12 - Notices and designated contact person

Any notice required or permitted by this Contract to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first class registered or certified mail, return receipt requested, postage prepaid or by Federal Express, UPS or other nationally recognized delivery service, with confirmation of delivery requested, and addressed as follows:

To County:

Highlands County Board of County Commissioners  
Engineering Department  
505 S. Commerce Ave.  
Sebring, FL 33870  
Attn: James D. Langford, Jr. P.E. Assistant County Engineer/Project Manager

To Contractor:

Attn: \_\_\_\_\_

The Parties shall designate a contact person who shall be the primary contact person for each Party:

The County: James D. Langford, JR. P.E., Project Manager

The Contractor: \_\_\_\_\_

## Article 13 - Public Records Compliance

If by providing services to Owner pursuant to this Contract, Contractor is a contractor, as defined by Section 119.0701, Florida Statutes, Contractor shall:

- 13.01 Keep and maintain public records required by the County to perform the services.
- 13.02 Upon request of the County's custodian of public records, provide the County 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.
- 13.03 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 term of this Contract and following completion of this Contract if Contractor does not transfer the records to the County.

- 13.04 Upon completion of this Contract, transfer to the County, at no cost, all public records in possession of Contractor or keep and maintain public records required by the County to perform the services. If Contractor transfers all public records to the County upon completion of this Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

#### **Article 14 - Indemnification**

- 14.01 To the fullest extent permitted by law, Contractor shall, in addition to any other obligation to indemnify the County, the State of Florida and FDOT and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the County, the State of Florida, and FDOT, and each of their elected officials, employees, agents, and volunteers, from and against all claims, actions, liabilities, losses (including economic losses), costs, including attorneys' fees and all costs of litigation, and judgments of every name and description arising out of or incidental to the performance of this Agreement (as used here the term "Agreement" refers to the specifications of the ITB and the Bid accepted by the County) or work performed under or related to the Agreement, unless caused by the sole negligence of the County, the State of Florida or FDOT, or any of their elected officials, employees, agents, or volunteers. Any cost or expenses, including attorneys' fees (including appellate, bankruptcy or patent counsel fees), incurred by the County, the State of Florida or FDOT to enforce this Indemnification shall be borne by the Contractor. This Indemnification shall also cover all claims brought against the County, State of Florida or FDOT, or any of their elected officials, employees, agents, or volunteers by any employee of the Contractor. The Contractor's obligation under this Indemnification shall not be limited in any way to the County-accepted price as shown in Contractor's Bid or the Contractor's limit on or lack of sufficient insurance protection. Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Indemnification shall survive indefinitely.

#### **Article 15 - Compliance with Section 20.055 (5)**

- 15.01 The Contractor agrees to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes that states it is the duty of every contractor and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.

#### **Article 16 Disadvantage Business Enterprise (DBE)**

- 16.01 The Contractor, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department-assisted contracts. Failure of the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Recipient deems appropriate.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Gloria Rybinski  
County Public Information Officer  
Telephone Number: 863-402-6836  
E-mail Address: [records@hcbcc.org](mailto:records@hcbcc.org)  
Mailing Address: 600 South Commerce Avenue  
Sebring, FL 33870**

**THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY**

IN WITNESS WHEREOF, the parties of these presents have executed this Agreement in three (3) counterparts, each of which shall be deemed an original, but all of which constitute the same Agreement, in the year and day first shown and mentioned.

OWNER: HIGHLANDS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,  
BY ITS BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_

James L. Brooks, Chairman

ATTEST: [SEAL]

By: \_\_\_\_\_

Robert W. Germaine, Clerk

CONTRACTOR: AJAX PAVING INDUSTRIES OF FLORIDA, LLC  
a Florida limited liability company

Signature: \_\_\_\_\_ [SEAL]

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

Print Title: Member (authorized to sign on behalf of Ajax Paving Industries, LLC)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as a Member of Ajax Paving Industries of Florida, LLC, a Florida limited liability company, who is personally known to me ☐ or who has produced \_\_\_\_\_ as identification ☐, and who did not take oaths.

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

Notary Public, State of Florida

My Commission Expires: :

**SECTION 00600**  
**PUBLIC CONSTRUCTION BOND**

(Florida Statutes Section 255.05(3))

BY THIS BOND, We \_\_\_\_\_, as Principal and \_\_\_\_\_, a \_\_\_\_\_ corporation, as Surety, are bound to Highlands County, a political subdivision of the State of Florida, herein called OWNER, in the sum of \$\_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the CONTRACT dated\_\_\_\_\_, 20 , between Principal and OWNER for construction of Highlands County ITB 19-030- Thunderbird East & Thunderbird West Sidewalk Extensions - Project 15009 & 15010 the CONTRACT being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the CONTRACT; and
3. Pays OWNER all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that OWNER sustains because of a default by Principal under the CONTRACT; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the CONTRACT, then this bond is void; otherwise it remains in full force.

Any changes in or under the CONTRACT documents and compliance or noncompliance with any formalities connected with the CONTRACT or the changes does not affect Surety's obligation under this bond.

DATE ON\_\_\_\_\_, 20\_\_\_\_\_.

AS SURETY:

CONTRACTOR, AS PRINCIPAL:

\_\_\_\_\_  
(Name of Surety)

By:\_\_\_\_\_  
(As Attorney in Fact)

By:\_\_\_\_\_

Title:\_\_\_\_\_

**SECTION 00600**  
**PUBLIC CONSTRUCTION BOND**

1. A good and sufficient Public Construction bond, in the penal sum of not less than one hundred (100%) percent of the contract amount, with a surety company satisfactory to OWNER, will be required of CONTRACTOR guaranteeing that the contract, including the various guarantee periods there under will be faithfully performed; and that CONTRACTOR will promptly make payment to all persons supplying CONTRACTOR labor, materials, supplies and services used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the CONTRACT.
2. The Surety Company furnishing this bond shall be authorized to do business in the State of Florida, shall be in compliance with the provisions of the Florida insurance code, shall have twice the minimum surplus and capital required by the Florida Insurance code, and shall hold a currently valid certificate of authority issued by the United States Department of Treasury pursuant to Title 31, Sections 9304-9308, of the United States Code. Surety company must have a rating of not less than "A-X" by the latest edition of the KEY RATING GUIDE as published by A.M. Best company, A.M. Best Road, Oldwick, NJ 08858.
3. The Attorney-in-Fact (Resident Agent) who executes the Public Construction Bond on behalf of the Surety Company must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the surety on the date of execution of the bonds. All signatures must be original. No copied or facsimile signatures will be accepted. All CONTRACTS, Public Construction Bond, and respective powers-of-attorney will have the same date.
4. In the event the Surety Company becomes unsatisfactory to OWNER, OWNER may at its discretion, require from CONTRACTOR an additional or new bond in the same or lessor penal sum, satisfactory to OWNER, and to be conditioned as above required. Upon CONTRACTOR's failure to furnish such additional or new bond within ten (10) days from the date of written notice to do so, all payments under the CONTRACT will be withheld until such additional bond is furnished.

END OF SECTION

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology .....	1
1.01 Defined Terms .....	1
1.02 Terminology .....	5
Article 2 – Preliminary Matters .....	6
2.01 Delivery of Bonds and Evidence of Insurance .....	6
2.02 Copies of Documents .....	6
2.03 Before Starting Construction.....	6
2.04 Preconstruction Conference; Designation of Authorized Representatives .....	7
2.05 Initial Acceptance of Schedules.....	7
2.06 Electronic Transmittals.....	7
Article 3 – Documents: Intent, Requirements, Reuse.....	8
3.01 Intent.....	8
3.02 Reference Standards .....	8
3.03 Reporting and Resolving Discrepancies .....	8
3.04 Requirements of the Contract Documents .....	9
3.05 Reuse of Documents .....	10
Article 4 – Commencement and Progress of the Work .....	10
4.01 Commencement of Contract Times; Notice to Proceed .....	10
4.02 Starting the Work .....	10
4.03 Reference Points .....	10
4.04 Progress Schedule .....	10
4.05 Delays in Contractor’s Progress .....	11
Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions .....	12
5.01 Availability of Lands .....	12
5.02 Use of Site and Other Areas .....	12
5.03 Subsurface and Physical Conditions.....	13
5.04 Differing Subsurface or Physical Conditions.....	14
5.05 Underground Facilities .....	15

5.06	Hazardous Environmental Conditions at Site.....	17
Article 6 – Bonds and Insurance .....		19
6.01	Performance, Payment, and Other Bonds .....	19
6.02	Insurance—General Provisions .....	19
6.03	Contractor’s Insurance.....	20
6.04	Owner’s Liability Insurance .....	23
6.05	Property Insurance.....	23
6.06	Waiver of Rights .....	25
6.07	Receipt and Application of Property Insurance Proceeds.....	25
Article 7 – Contractor’s Responsibilities .....		26
7.01	Supervision and Superintendence .....	26
7.02	Labor; Working Hours .....	26
7.03	Services, Materials, and Equipment.....	26
7.04	“Or Equals” .....	27
7.05	Substitutes .....	28
7.06	Concerning Subcontractors, Suppliers, and Others .....	29
7.07	Patent Fees and Royalties .....	31
7.08	Permits .....	31
7.09	Taxes .....	32
7.10	Laws and Regulations.....	32
7.11	Record Documents.....	32
7.12	Safety and Protection.....	32
7.13	Safety Representative .....	33
7.14	Hazard Communication Programs .....	33
7.15	Emergencies .....	34
7.16	Shop Drawings, Samples, and Other Submittals.....	34
7.17	Contractor’s General Warranty and Guarantee.....	36
7.18	Indemnification .....	37
7.19	Delegation of Professional Design Services .....	37
Article 8 – Other Work at the Site .....		38
8.01	Other Work .....	38
8.02	Coordination .....	39
8.03	Legal Relationships.....	39

Article 9 – Owner’s Responsibilities.....	40
9.01    Communications to Contractor.....	40
9.02    Replacement of Engineer .....	40
9.03    Furnish Data .....	40
9.04    Pay When Due.....	40
9.05    Lands and Easements; Reports, Tests, and Drawings .....	40
9.06    Insurance.....	40
9.07    Change Orders.....	40
9.08    Inspections, Tests, and Approvals.....	41
9.09    Limitations on Owner’s Responsibilities .....	41
9.10    Undisclosed Hazardous Environmental Condition.....	41
9.11    Evidence of Financial Arrangements.....	41
9.12    Safety Programs .....	41
Article 10 – Engineer’s Status During Construction.....	41
10.01    Owner’s Representative.....	41
10.02    Visits to Site.....	41
10.03    Project Representative.....	42
10.04    Rejecting Defective Work.....	42
10.05    Shop Drawings, Change Orders and Payments.....	42
10.06    Determinations for Unit Price Work .....	42
10.07    Decisions on Requirements of Contract Documents and Acceptability of Work .....	42
10.08    Limitations on Engineer’s Authority and Responsibilities.....	42
10.09    Compliance with Safety Program.....	43
Article 11 – Amending the Contract Documents; Changes in the Work .....	43
11.01    Amending and Supplementing Contract Documents .....	43
11.02    Owner-Authorized Changes in the Work .....	44
11.03    Unauthorized Changes in the Work .....	44
11.04    Change of Contract Price .....	44
11.05    Change of Contract Times .....	45
11.06    Change Proposals .....	45
11.07    Execution of Change Orders.....	46
11.08    Notification to Surety.....	47
Article 12 – Claims.....	47

12.01	Claims .....	47
Article 13 – Cost of the Work; Allowances; Unit Price Work.....		48
13.01	Cost of the Work .....	48
13.02	Allowances .....	50
13.03	Unit Price Work .....	51
Article 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work .....		52
14.01	Access to Work.....	52
14.02	Tests, Inspections, and Approvals.....	52
14.03	Defective Work .....	53
14.04	Acceptance of Defective Work.....	53
14.05	Uncovering Work .....	53
14.06	Owner May Stop the Work .....	54
14.07	Owner May Correct Defective Work.....	54
Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period .....		55
15.01	Progress Payments.....	55
15.02	Contractor’s Warranty of Title .....	58
15.03	Substantial Completion.....	58
15.04	Partial Use or Occupancy .....	59
15.05	Final Inspection .....	59
15.06	Final Payment.....	59
15.07	Waiver of Claims .....	61
15.08	Correction Period .....	61
Article 16 – Suspension of Work and Termination .....		62
16.01	Owner May Suspend Work .....	62
16.02	Owner May Terminate for Cause .....	62
16.03	Owner May Terminate For Convenience .....	63
16.04	Contractor May Stop Work or Terminate .....	63
Article 17 – Final Resolution of Disputes .....		64
17.01	Methods and Procedures.....	64
Article 18 – Miscellaneous .....		64
18.01	Giving Notice .....	64
18.02	Computation of Times.....	64
18.03	Cumulative Remedies .....	64

18.04	Limitation of Damages .....	65
18.05	No Waiver .....	65
18.06	Survival of Obligations.....	65
18.07	Controlling Law .....	65
18.08	Headings.....	65

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.



37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not conform to the Contract Documents; or
    - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
    - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### *2.04 Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### *2.05 Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

#### *2.06 Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 Intent**

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

#### **3.02 Reference Standards**

- A. Standards Specifications, Codes, Laws and Regulations
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

#### **3.03 Reporting and Resolving Discrepancies**

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. abnormal weather conditions;
  3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.



- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

## **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **5.02 Use of Site and Other Areas**

- A. *Limitation on Use of Site and Other Areas:*
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
  - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
  - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  - 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. Contractor gave the notice required in Paragraph 5.05.B.
  - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

## 5.06 Hazardous Environmental Conditions at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is



maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

### 6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
  - 1. include at least the specific coverages provided in this Article.
  - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

#### 6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
  - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  6. extend to cover damage or loss to insured property while in transit.
  7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. allow for the waiver of the insurer's subrogation rights, as set forth below.
  9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. not include a co-insurance clause.
  11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. include performance/hot testing and start-up.
  13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

#### 6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

#### 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

## **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

### **7.01   *Supervision and Superintendence***

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

### **7.02   *Labor; Working Hours***

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

### **7.03   *Services, Materials, and Equipment***

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.



- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

**7.06 Concerning Subcontractors, Suppliers, and Others**

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

#### 7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
  - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
  - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
  - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
  - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### **7.13**    *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### **7.14**    *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.16 *Shop Drawings, Samples, and Other Submittals*

##### A. *Shop Drawing and Sample Submittal Requirements:*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.



8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### **7.18 Indemnification**

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### **7.19 Delegation of Professional Design Services**

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

## **ARTICLE 8 – OTHER WORK AT THE SITE**

### **8.01 Other Work**

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

## 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

## 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### **9.01    *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02    *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

### **9.03    *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04    *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

### **9.05    *Lands and Easements; Reports, Tests, and Drawings***

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### **9.06    *Insurance***

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

### **9.07    *Change Orders***

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

**9.08**    *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

**9.09**    *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

**9.10**    *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.11**    *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

**9.12**    *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

**10.01**    *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

**10.02**    *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### *10.03 Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### *10.04 Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

#### *10.05 Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

#### *10.06 Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

#### *10.07 Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

#### *10.08 Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

#### *10.09 Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### *11.01 Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an



adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### *11.02 Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### *11.03 Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

#### *11.04 Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### *11.05 Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### *11.06 Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### **11.08 Notification to Surety**

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12 – CLAIMS**

#### **12.01 Claims**

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
  - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
  1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### 13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.



## **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **14.01 Access to Work**

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### **14.02 Tests, Inspections, and Approvals**

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### *14.06 Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### *14.07 Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## **ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
  2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

#### *15.02 Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### *15.03 Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### *15.04 Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### *15.05 Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### *15.06 Final Payment*

- A. *Application for Payment:*
  - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of



inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

**B. *Engineer's Review of Application and Acceptance:***

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

**C. *Completion of Work:*** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

**D. *Payment Becomes Due:*** Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### *15.07 Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### *15.08 Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### *16.03 Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### *16.04 Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### **18.02 *Computation of Times***

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

### **18.03 *Cumulative Remedies***

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

*18.04 Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

*18.05 No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

*18.06 Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

*18.07 Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

*18.08 Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**DIVISION 0 - SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**  
**ITB 19-030**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2013 Edition) and other provisions of the Contract Documents as indicated below. All references in these Supplementary Conditions to the Standard General Conditions are to the Standard General Conditions of the Construction Contract, EJCDC C-700 (2013 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings stated in those Standard General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the Standard General Conditions of the Construction Contract EJCDC C-700 (2013 Edition), with the prefix "SC" added thereto.

**SC-1.01** *Defined Terms*

Delete the definition of the term Liens in Paragraph 1.01.A.24. and insert in its place the following:

24.     *Liens* – Charges, security, interests, or encumbrances upon Contract – related funds, real property, or personal property and claims delivered to Owner by laborers, Subcontractors, and Suppliers who have not been paid by Contractor.

**SC-2.01** *Delivery of Bonds and Evidence of Insurance*

Delete Paragraph 2.01.A. in its entirety and insert the following in its place:

- A.     When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner unexecuted copies of the bonds and related powers of attorney that Contractor will be required to furnish. Within 10 days after execution of the Agreement by Owner, Contractor shall deliver to Owner fully executed bonds, accompanied by a certified copy of the signing individual's authority to bind the surety establishing that it is effective on the date the agent or attorney-in-fact signed the accompanying bond, as provided in Paragraph 5.06.B. of the Standard General Conditions.

**SC-2.02** *Copies of Documents*

Delete Paragraph 2.02.A. in its entirety and insert the following in its place:

- A. Owner shall furnish Contractor with 1 printed copy of the fully executed Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

SC-2.04 *Preconstruction Conference; Designation of Authorized Representatives*

Add the following to the end of Paragraph 2.04.A.:

Contractor shall be ready, willing, and able to attend this conference within 10 calendar days after the date of the notice to proceed. The date, time, and place of this conference will be set by Engineer.

SC-4.01 *Commencement of Contract Times; Notice to Proceed*

Delete Paragraph 4.01.A. in its entirety and insert the following in its place:

- A. The Contract Times will commence to run on the day indicated in a Notice to Proceed.

SC-4.02 *Starting the Work*

Add the following new Paragraph to Paragraph 4.02:

- B. Contractor, before beginning the Work or within 2 workdays thereafter, shall post in a conspicuous place on the Site the following notice.

Notice is hereby made to all those concerned and affected \_\_\_\_\_ is performing the "Thunderbird East & Thunderbird West Sidewalk Extensions, Highlands County Project No.'s 15009 & 15010".

1". All parties furnishing labor and/or materials to that project must, within twenty (20) days of first providing such labor and/or materials, deliver notice of such in writing, by certified mail, return receipt requested, to:

HIGHLANDS COUNTY BOARD OF COUNTY COMMISSIONERS  
ENGINEERING DEPARTMENT  
ATTN: JAMES D. LANGFORD, JR.  
505 S. Commerce Ave., SEBRING, FLORIDA 33875-5803

SC-5.01 *Availability of Lands*

Delete the following from Paragraph 5.01.B.:

as necessary for giving notice of or filing a mechanic's or construction Lien against such lands in accordance with applicable Laws and Regulations



#### SC-5.02 Use of Sites and Other Areas

Add the following new paragraph to Paragraph 5.02:

- E. Contractor shall at all times control dust and keep the Sites free from accumulation of waste materials or rubbish caused by Contractor's employees or subcontractors, and at the completion of the Work, Contractor shall remove all Contractor's rubbish from and about the Sites and all Contractor's tools and surplus materials and shall leave Contractor's Sites and any other Work area clean. Owner may remove the rubbish and charge the cost to Contractor as the Engineer may determine to be just. In the event that Contractor does not keep the Sites and any other Work area free of rubbish or accumulations of waste materials and control dust, Owner will withhold an additional 5% from any pay request, above and beyond the standard 10% retainage.

#### SC-5.03 Subsurface and Physical Conditions

Add the following new paragraphs immediately after Paragraph 5.03.B:

- C. *Subsurface Conditions Known to Owner:* The subsurface conditions at or contiguous to the Site known to Owner are shown on the Drawings and Specifications that are Exhibit "A" of the Contract Documents. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Project Manager.
- D. *Unforeseen Physical Conditions:* Contractor shall notify Engineer in writing of any subsurface or latent physical condition at the Site differing materially from those indicated in the Contract Documents. Engineer shall promptly investigate those conditions and advise Owner in writing if additional information shall be required. Owner shall then obtain such information, and if deemed necessary, shall issue written orders to perform necessary revisions.

#### SC 5.05 Underground Facilities

Add the following new Paragraph to Paragraph 5.05:

- F. *Protection of Underground Facilities.*
  - 1. Existing utilities and other facilities such as drainage structures have been indicated on the Drawings and Specifications only to the extent that such information was made available to Owner. There is no guarantee as to the accuracy or completeness of this information, and Owner will not be responsible for such accuracy or completeness.

2. Contractor shall be responsible for protecting all such utilities indicated in the manner determined necessary by the owner of such utilities. Any utilities not indicated on the Drawings and Specifications, which do not require relocation, shall be protected by Contractor. The Work shall be performed at the original Contract Price. All visible surface facilities or underground utilities shown on the Drawings and Specifications, whether or not shown to be relocated, shall be protected or relocated by Contractor at its expense.
3. Utility relocations are not anticipated for this Project. However, existing utilities which are found during construction and determined necessary to be relocated will be considered an unknown condition. Contractor will cooperate with the appropriate authority in identifying and protecting the utility during relocation.
4. Abandoned utilities, when encountered, shall be severed and plugged at Contractor's expense.
5. Contractor shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities and by prospecting and pot holing. Any damage to facilities not shown shall be solely the responsibility of Contractor.

SC-5.06 Hazardous Environmental Conditions at Site

Delete Paragraphs 5.06.A. and 5.06B. in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

Delete Paragraph 5.06.I. in its entirety.

SC-6.01 Performance, Payment, and Other Bonds

Delete Paragraph 6.01.A. in its entirety and insert the following in its place:

- A. Contractor shall furnish a payment and performance bond in an amount at least equal to the Contract Price, in complete satisfaction of the provisions of Section 255.05, Florida Statutes, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The form of the payment and performance bond shall be in the form of the Pubic Construction Bond provided by Owner in Section 00600 of the ITB issued by Owner for construction of the Work. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws and Regulations.

the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract. Contractor shall record that bond in the Public Records of Highlands County, Florida, as required by Section 255.05(1), Florida Statutes.

SC-6.03 *Contractor's Insurance*

Delete Paragraph 6.03. I.3. in its entirety and insert the following in its place:

3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 10 days, or such longer time period as is required by Laws and Regulations, prior written notice has been given to Contractor.

Add the following new Paragraphs to Paragraph 6.03:

- K. Contractor shall have and maintain in full force and effect the following insurance during the Term of this Contract and shall furnish to County Certificates of Insurance documenting that insurance coverage has been obtained which meets the following requirements:
  1. Workers' Compensation. Contractor shall have and maintain workers' compensation insurance for all employees for statutory limits in compliance with Laws and Regulations. This insurance policy must include Employer's Liability with a limit of \$100,000 each accident, \$500,000 disease (policy Limit), and \$100,000 disease (each employee).
  2. Commercial General Liability. Occurrence Form Required: Contractor shall have and maintain commercial general liability (CGL) insurance with a limit of not less than \$3,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project in the amount of \$3,000,000. Products and completed operations aggregate shall be \$3,000,000. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Fire damage liability shall be included at \$100,000.
  3. Commercial Auto Liability Insurance. Contractor shall have and maintain commercial automobile liability insurance with a limit of not less than \$3,000,000 combined single limit per occurrence for bodily injury and property damage liability. That insurance shall cover liability arising out of any

auto (including owned, hired, and non-owned autos). The policy shall be endorsed to provide contractual liability coverage.

4. Umbrella Excess Liability - Contractor may satisfy the required minimum liability limits with an Umbrella or Excess Liability policy. Contractor agrees to endorse Owner and its elected officials, agents, employees, and volunteers, in the manner required by Paragraph 6.03.K.7, as Additional Insureds unless the Umbrella provides "follow form" provisions of the underlying policies. This must be confirmed in writing on the Certificate of Insurance.
  5. Deductibles/Retentions - Contractor is responsible for any expenses or costs below deductibles applicable to any policies.
  6. Formal Certificates of Insurance shall be delivered by Contractor to Owner upon execution of the Agreement. Certificates of Insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf. All Certificates of Insurance must be on file with and approved by Owner before commencement of any Work activities.
  7. The formal insurance certificates shall name "Highlands County, a political subdivision of the State of Florida and its elected officials, agents, employees and volunteers" as "Additional Insureds" on all policies except Workers' Compensation. Additional Insureds status for Completed Operations must be provided without time limitation or for a minimum of 5 years following completion of the Project.
  8. These are minimum requirements which are subject to modification in response to high hazard operations. Owner reserves the right to require Contractor to provide and pay for any other insurance coverage Owner deems necessary, depending upon the possible exposure to liability.
  9. The policies of insurance shall be written on forms acceptable to Owner and placed with insurance carriers authorized by the Insurance Department in the State of Florida and meet a minimum financial AM Best company rating of no less than "A- Excellent: FSC VII.
  10. All policies must include Waiver of Subrogation and any liability aggregate limits shall apply "Per Jobsite"/Per Job Aggregate. All liability insurance shall be Primary and Non-Contributory. Each Certificate of Insurance shall confirm in writing that these provisions apply.
- L. Contractor shall require each Subcontractor to have and maintain the insurance required by Paragraph 6.03.K. This requirement may be modified by Owner by written instrument on a case by case basis, in its sole discretion. It is the

responsibility of the Contractor to ensure that all Subcontractors comply with all insurance requirements.

- M. Contractor shall provide notification to Owner and Engineer by overnight delivery return receipt requested, hand delivery or confirmed facsimile 30 days prior to giving and within 3 days after receiving notice of cancellation, modification, non-renewal, or any other lapse in coverage of any required insurance policies.

#### SC-6.05 *Property Insurance*

Delete Paragraph 6.05.B. in its entirety and insert the following Paragraph in its place:

- B *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days, or such longer time period as is required by Laws and Regulations, prior written notice has been given to the purchasing policyholder. Contractor shall provide notification to Owner and Engineer by overnight delivery return receipt requested, hand delivery or confirmed facsimile 30 days prior to giving and within 3 days after receiving notice of cancellation, modification, non-renewal, or any other lapse in coverage of any required insurance policies.

#### SC-6.06 *Waiver of Rights*

Delete Paragraphs 6.06.B. and C. in their entirety.

#### SC-7.01 *Supervision and Superintendence*

Add the following to the end of Paragraph 7.01.B.:

The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

#### SC-7.02 *Labor; Working Hours*

Add the following new Paragraphs immediately after Paragraph 7.02.B.:

- C. In all cases, local labor shall be given preference when available.
- D. Whenever Owner shall notify Contractor that any man on the Work is, in his opinion, incompetent, unfaithful, or disorderly, or who uses threatening or abusive language to any person representing Owner when on the Work, such man shall be

immediately discharged from the Work and shall not be re-employed thereon except with the consent of Owner.

SC-7.03 Services, Materials, and Equipment

Add the following new Paragraph immediately after Paragraph 7.03.C.:

D. The responsibility for the protection and safekeeping of equipment and materials on or near the Site will be entirely that of Contractor and that no Claim shall be made against Owner by reason of any act of an employee or trespasser. Should an occasion arise necessitating access to the sites occupied by the stored materials and equipment, Contractor shall immediately move same. No materials or equipment may be placed upon the property of Owner until Owner has approved the location contemplated by Contractor to be used for storage.

SC-7.04 "Or Equals"

Delete the word "considered" from Paragraph 7.04.E. and insert the word "consider" in its place.

SC-7.06 Concerning Subcontractors, Suppliers, and Others

Delete Paragraph 7.06.H. in its entirety and insert the following in its place:

H. Prior to submitting the first Application for Payment and within 3 workdays after any change, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

SC-7.07 Patent Fees and Royalties

Delete Paragraph 7.07.B. in its entirety.

SC-7.08 Permits

Delete Paragraph 7.08.A. in its entirety and insert the following in its place:

A. Unless otherwise provided in the Contract Documents or Section 218.80, Florida Statutes, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

SC-7.09 Taxes and Direct Material Purchase Procedure

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Add the following new Paragraphs immediately after Paragraph 7.09.A.:

- B. Owner is exempt from payment of sales and compensating use taxes of the State of Florida and of cities and counties thereof on all materials to be incorporated into the Work.
  - C. Contractor shall provide assistance to Owner for Direct Purchases to enable Owner to purchase tangible personal property needed for this Project which Owner intends to purchase in order to realize savings of sales tax on all tangible personal property needed for this Project. Contractor will recommend direct purchases for items where those direct purchases will result in significant tax savings to Owner. Owner will either accept or reject Contractor's recommendations, and purchases will be made according to Owner's decision. Owner retains the absolute right, with or without Contractor's recommendation, to purchase any or all tangible personal property needed for this Project.
  - D. Contractor will provide detailed scoping and pricing for purchase orders with a minimum value of Five Thousand Dollars (\$5,000.00), in harmony with the Subcontractors to Owner for the incorporation in Owner's purchase orders.
  - E. Owner will issue purchase orders within three (3) workdays from the date of receipt of requisition, directly to the vendors and provide a copy of each purchase order to Contractor.
  - F. Contractor will be responsible for the materials until they are incorporated into the Project and will purchase and/or have ample Builder's Risk insurance for the direct purchased materials.
  - G. Contractor will issue a deductive subcontract adjustment to the Subcontractor which will account for the value of the material and the sales tax as it pertains to that Subcontractor's contract. All subcontracts shall include a clause incorporating, by reference, the provisions of this Paragraph 7.09.
  - H. As the material is delivered to the Site, the Subcontractor will sign off on the delivery receipt/invoice for the material delivered, store and secure the material adequately at the Site, and forward the invoice to Contractor who will review, approve and forward the invoice to Owner's Representative for approval and processing.
  - I. Owner will draft a check for the approved invoice amount and mail that check directly to the vendor. A list of the check numbers with related dates of issue, names of vendors, amounts paid, and paid invoice numbers will be forwarded to Contractor in order that Contractor can accurately track payment.
  - J. Contractor and Owner are encouraged to take advantage of all discounts available.
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- K. Owner will issue to Contractor a deductive Change Order in the amount of the direct purchased materials. The amount equal to the sales tax which would have been paid if those materials had been purchased by Contractor will be credited to Owner through a Contingency line item on the pay application's schedule of values, and the Contract Price specified in Article 4 of the Agreement shall be reduced by an amount equal to the amounts paid directly by Owner for direct purchases made pursuant to this Article, plus an amount equal to the sales tax that would have been paid if those materials had been purchased by Contractor.

#### SC-7.10 *Laws and Regulations*

Delete Paragraph 7.10.B. in its entirety and insert the following in its place:

- B. It shall be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations. Contractor shall bear all costs and losses, and shall indemnify and hold harmless Owner and Owner's officers and employees from and against all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees arising out of or relating to Work or other action that is contrary to Laws or Regulations.

#### SC-7.11 *Record Documents*

Delete the word "Engineer" at the end of Paragraph 7.11.A. and insert the word "Owner" in its place.

#### SC-7.12 *Safety and Protection*

Add the following new Paragraph to Paragraph 7.12:

- H. Contractor shall pay for all damages to private property, public property, and any public utilities.

#### SC-7.17 *Contractor's General Warranty and Guarantee*

Add the following new Paragraph to paragraph 7.17:

- E. All materials incorporated in the Work shall comply with the requirements of the Construction Documents. Any Defective Work which develop within 1 year after the date of final acceptance shall be promptly repaired by or replaced to "as new" condition by Contractor without any additional expense to Owner.

#### SC-7.18 *Indemnification*

Delete Paragraph 7.18 in its entirety and insert the following in its place.



- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Owner's officers and employees and FDOT, FDOT officers and employees from and against all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of any of the Work.
- B. In any and all claims against Owner or any of its officers or employees and FDOT, FDOT officers and employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly utilized by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall be limited to \$1,000,000 per occurrence.

#### SC-7.19 Delegation of Professional Design Services

Add the following new Paragraph immediately after Paragraph 7.19.E.:

- F. If Contractor provides professional design services as a design professional, as that term is defined in Section 725.08(4), Florida Statutes, Contractor shall indemnify and hold harmless Owner and Owner's 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 Contractor providing professional design services as a design professional and other persons employed or utilized by Contractor in the performance of the professional design services.

#### SC-7.20-7.29

Add the following new Paragraphs immediately after new Paragraph 7.19.F.:

#### SC-7.20 Storage of Materials

The responsibility for the protection and safekeeping of equipment and materials on or near the Site will be entirely that of Contractor, and no claim shall be made against Owner by reason of any act of an employee or trespasser. Should an occasion arise necessitating access to the Sites occupied by these stored materials and equipment, Contractor shall immediately move same. No materials or equipment may be placed upon the property of Owner until Owner has approved the location

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contemplated by Contractor to be used for storage.

SC-7.21    *Erosion and Drainage Control*

- A. Contractor shall implement Best Management Practices (BMP's) to provide for drainage of storm water and such water as may be applied or discharged on the Site in performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, the Site and adjacent property.
- B. Contractor shall prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris or other substances resulting from this work. Contractor shall clean up and isolate such materials on a continuing basis to prevent risk of washing into such drainage ways.
- C. Contractor shall determine if a Stormwater Discharge Permit or a Construction Dewatering Discharge Permit applies to the Work. Contractor shall obtain required permit(s) if necessary for completion of the Work.

SC-7.22    *Protection of Trees and Natural Conditions*

- A. No trees or shrubs shall be damaged or removed beyond delineated limits of disturbance except those flagged by Owner. No areas shall be disturbed beyond the designated limits indicated by Owner. Contractor shall install orange safety fence to delineate limits of disturbance, and Contractor shall be responsible for damage mitigation beyond these limits.

SC-7.23    *Dewatering*

- A. If dewatering is required at the Site, Contractor shall comply with all dewatering requirements of governmental agencies.

SC-7.24    *Protection of Public and Private Property*

- A. Contractor shall protect, shore, brace, support and maintain all underground pipes, conduits, drains, and other underground or above ground structures uncovered or otherwise affected by the construction of the Work performed by Contractor. All pavement, surfacing, driveways, curbs, walks, buildings, utility poles, guy wires, fences, guard posts, and other surface structures affected by construction operations, together with all trees, sod and shrubs in yards and parking lots removed or damaged, shall be restored to their original condition or replaced as determined and approved by Owner, whether within or outside Owner's right-of-way. All replacements shall be made with new materials.
- B. Contractor shall be responsible for all damages to streets, roads, highways, shoulders, ditches,

embankments, culverts, facilities and utilities, bridges, property corners and monuments and other public or private property, regardless of location or character, which may be caused by construction of the Work or by transporting equipment, materials or men to or from the Work or any part or site thereof, whether by Contractor or Contractor's Subcontractors. Contractor shall make satisfactory and acceptable arrangements with the owner of, or the agency or authority having jurisdiction over, the damaged property concerning its repair or replacement or payment of costs incurred in connection with the damage.

- C. All fire hydrants and water control valves shall be kept free from obstruction and for use at all times.
- D. Contractor shall be responsible for any damage to existing structures during the course of the Work.

#### SC-7.25 *Maintenance of Traffic*

- A. Contractor shall provide traffic control plans as required by the controlling highway, street or road authority. Contractor shall perform the Work so as to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever necessary to cross, use, obstruct or close roads, driveways and walks, whether public or private, Contractor shall, at its own expense, provide and maintain suitable and safe bridges, detours or other temporary expedients, for the accommodation of public and private travel, and shall give reasonable notice to owners of private drives before interfering with them. Such maintenance of traffic will not be required when Contractor has obtained permission from the owner and tenant of private property, or from the authority having jurisdiction over the public property involved, to obstruct traffic at the designated point. Obstructions, such as material piles and equipment, shall be provided with appropriate warning signs and lights.
- B. After completion, the roadway shall be restored to original condition, and disturbed areas shall be restored to original condition.

#### SC-7.26 *Testing*

- A. Contractor shall be responsible for all testing required for sampling and testing of materials to prove compliance with the Contract Documents. This shall include, but not be limited to mix design approvals for concrete and asphalt, pipe bedding gradations and Proctor tests and gradations for imported granular fill materials. Specific requirements shall be included in the applicable specification sections.
- B. Tests required to monitor control performance of the Work in accordance with the Contract Documents such as concrete cylinder tests and compaction tests shall be ordered and paid for by Contractor. Any retesting required as a result of the first test failure will be at Contractor's expense. Contractor will assist in providing locations and allowing the tests to be conducted without obstructions and in accordance with all Laws and Regulations. Contractor shall correct or modify its operations where indicated necessary by the test results.

SC-7.27 *Unfavorable Construction Conditions*

- A. During unfavorable weather, wet ground or other unsuitable construction conditions, Contractor shall confine its operations to work which will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which affect adversely the quality or efficiency thereof, unless special means or precautions are taken by Contractor to perform the Work in a proper and satisfactory manner.

SC-7.28 *Notices to Owners and Authorities*

- A. Contractor shall notify owners of adjacent property and utilities when prosecution of Work may affect them.
- B. Utilities and other concerned agencies shall be contracted at least 48 hours prior to cutting or closing streets or other traffic areas or excavating near Underground Facilities or pole lines.

SC-7.29 *Storage of Fuel or Hazardous Materials*

- A. No fuel or other hazardous materials shall be stored on the Site. Extreme care and compliance with all regulations shall be required when handling all such materials.

SC-11.01 *Amending and Supplementing Contract Documents*

Delete the first sentence of Paragraph 11.01.A. and insert the following in its place:

The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order if approved, in writing, by Owner.

SC-14.02 *Tests, Inspections, and Approvals*

Delete Paragraph 14.02.B. in its entirety and insert the following in its place:

- B. Owner shall retain and Contractor shall pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.

SC-15 **ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD.**

Add the following to the end of 15.01.B.1.:

If the payment and performance of the Work is not secured by a payment and performance bond, all applications for payment shall include a written statement that indicates how the payment will be distributed. Contractor shall disburse the payment as provided in that written statement.

Add the following new Paragraph to Paragraph 15.01.B.:

4. *If Requested by Owner:*

- a. Contractor shall deliver a certified list of all Subcontractors, laborers, and material suppliers to Owner within 30 days of receiving the request. This list shall be updated by Contractor thereafter each month with a certified statement by Contractor that the list and its updates include the names and address of all of Subcontractors, laborers, and Suppliers furnishing labor and/or material for the Project.
- b. Contractor shall provide a written statement with each pay request to the Owner which indicates how each payment will be distributed. This pay request breakdown shall define the disbursement of all the funds requested.
- c. When Contractor receives any payment pursuant to this Contract, Contractor shall pay laborers and each Subcontractor and Supplier the amounts stated in Contractor's written statement delivered to Owner for that pay request.
- d. Contractor shall provide a written statement with all but the first payment request from each of the Subcontractors, laborers, and Suppliers identified in Paragraph 15.01.B.4.b., that they have in fact received payment as provided in Paragraph 15.01.B.4.c. In the event a payment will not be made as stated on a prior written statement delivered pursuant to Paragraph 15.01.B.4.b., Contractor shall furnish an explanation as to the reasons for such deviation and shall request approval from the Engineer.

Add the following new Paragraphs immediately after Paragraph 15.08.E.:

SC-15.09      *Local Government Prompt Payment Act*

- A. If the total cost of the construction services purchased by Owner pursuant to this Contract exceeds \$200,000, the provisions of this Article are subject to the provisions of the Local Government Prompt Payment Act, Sections 218.70 through 218.79, inclusive, Florida Statutes, except to the extent provided therein and in that event provisions of this Article are modified and amended to the extent required to be consistent with the Local Government Prompt Payment Act.

SC-15.10      *Interest*

All moneys not paid when due as provided in Paragraph 15 shall bear interest at the maximum rate of six (6) percent per annum, simple.

SC-16.02 *Owner May Terminate for Cause*

Delete Paragraph 16.02 in its entirety and insert the following in its place:

*16.02 Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  4. Contractor's repeated disregard of the authority of Owner or Engineer; or
  5. Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten (10) days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, give Contractor (and any surety) notice that the Contract is terminated, and enforce the rights available to Owner under any applicable payment and performance bond; or
  2. notify Contractor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Contract will be terminated at the end of such time; or
  3. take whatever action is deemed appropriate by Owner.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost

to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraph 16.02.B.

17.0 All Change Orders require review and approval by FDOT.

## **SECTION 01010 SUMMARY OF WORK**

### **PART 1 - GENERAL**

#### **1.1 REQUIREMENTS INCLUDED**

- A. Title of Work, and Type of Contract
- B. Contractor Use of Premises
- C. Coordination
- D. Field Engineering
- E. Reference Standards
- F. Special Provisions

#### **1.2 WORK COVERED BY CONTRACT DOCUMENTS**

- A. The scope of work for this project includes: provide all labor, materials and equipment to construct the THUNDERBIRD EAST & THUNDERBIRD WEST SIDEWALK EXTENSIONS. The work consists of installing approximately 4,399 linear feet of 5' concrete sidewalk extension, roadside swales and various drainage structures.

The principal features, as defined above, are not intended to cover every aspect of the installation details. CONTRACTOR shall be responsible for reviewing the Contract Documents, plans, and specifications to determine full scope of work and specific requirements for the project, which include familiarity and compliance with all federal, state, and local laws and regulations.

- B. This is a Lump Sum Contract with only one pay item listed in the Contract. All references to payment under individual pay item numbers, regardless of where those references are contained in the Contract Documents or when in time any such pay item reference is incorporated in the Contract Documents, are superseded by the Special Provision.

Unit prices are provided in the Bid Form for additions and deletions to the Contract. Contractor shall be responsible for verification of all quantities.

#### **1.3 CONTRACTOR USE OF PREMISES**

- A. Limit use of the premises for Work and construction operations. Contractor must make arrangements for storage of equipment and materials.



- B. Contractor shall provide at all times for maintenance of traffic along all public rights-of-way in accordance with requirements of the Florida Department of Transportation.

#### 1.4 COORDINATION

- A. Effective coordination with Owner, local government and utilities will be crucial to the timely and efficient completion of the overall project. The CONTRACTOR shall notify the ENGINEER of any potential conflicts prior to their occurrence.
- B. Coordinate work of the various Sections of Specifications to assure efficient and orderly sequence of installation of construction elements, with provisions made for accommodating items installed later.
- C. Coordinate work of various Sections having interdependent responsibilities for installing, connecting to, and placing in service equipment or materials.

#### 1.5 FIELD ENGINEERING

- A. Provide field engineering services; establish grades, lines, and levels, by use of recognized engineering survey practices.
- B. Control for survey is that shown on Drawings. Locate and protect control and reference points.

#### 1.6 REFERENCE STANDARDS

- A. For products specified by association or trade standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- B. The date of the standard is that in effect as of the Bid date, except when a specific date is specified.
- C. Obtain copies of standards when required by Contract Documents. Maintain copy at job site during progress of the specific Work.

#### **PART 2 - PRODUCTS** (Not Applicable)

#### **PART 3 - EXECUTION** (Not Applicable)

END OF SECTION

**SECTION 01041**  
**PROJECT COORDINATION**

**PART 1 - GENERAL**

**1.1 PROJECT SITE**

- A. CONTRACTOR shall furnish personnel and equipment which will be efficient, appropriate and large enough to secure a satisfactory quality of work and a rate of progress which will insure the completion of the work within time stipulated in the Bid of these Specifications. If at any time such personnel appear to ENGINEER to be inefficient, inappropriate or insufficient for securing the quality of work required or for producing the rate of progress aforesaid, ENGINEER may order CONTRACTOR to increase the efficiency, change the character or increase the personnel and equipment, and CONTRACTOR shall conform to such order. Failure of ENGINEER to give such order shall in no way relieve CONTRACTOR of CONTRACTOR'S obligations to secure the quality of the Work and rate of progress.

**1.2 PRIVATE LAND**

- A. CONTRACTOR shall not enter or occupy private land outside of the project site, except by written permission of the appropriate owners. CONTRACTOR shall provide OWNER a copy of such written permission.

**1.3 PIPE LOCATIONS**

- A. ENGINEER reserves the right to make such modifications in locations as may be found desirable to avoid interference with existing utilities or structures. All changes in location will be noted on CONTRACTOR "As-Built" prints.

**1.4 OPEN EXCAVATIONS**

- A. All open excavations shall be adequately safeguarded by providing temporary barricades, caution signs, lights and other means to prevent accidents to persons, and damage to property. CONTRACTOR shall, at his own expense, provide suitable and safe bridges and other crossings for accommodating travel by operators and workmen.

**1.5 TEST PITS**

- A. Test pits for the purpose of locating underground pipeline or structures in advance of the construction shall be excavated and backfilled by CONTRACTOR. Test pits shall be backfilled immediately after their purpose has been satisfied and maintained in a manner

satisfactory to ENGINEER. The costs for such test pits shall be borne by CONTRACTOR.

#### 1.6 CARE AND PROTECTION OF PROPERTY

- A. CONTRACTOR shall be responsible for the preservation of all public and private property, and shall use every precaution necessary to prevent damage thereto. If any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work on the part of CONTRACTOR, such property shall be restored by CONTRACTOR, at CONTRACTOR'S expense, to a condition similar or equal to the existing before the damage was done, or CONTRACTOR shall make good the damage in other manner acceptable to ENGINEER.

### **PART 2 - PRODUCTS**

#### 2.1 COOPERATION WITHIN THIS CONTRACT

- A. All firms or persons authorized to perform any work under this CONTRACT shall cooperate with the General CONTRACTOR and its subcontractors or trades and shall assist in incorporating the work of other trades where necessary or required.
- B. Cutting and patching, or jacking and boring shall be carried out where required by the trade or subcontractor having jurisdiction, unless otherwise indicated herein or directed by ENGINEER.

#### 2.2 PROTECTION OF CONSTRUCTION AND EQUIPMENT

- A. All newly constructed work shall be carefully protected from injury in any way. No wheeling or walking or placing of heavy loads on it shall be allowed and all portions injured shall be reconstructed by CONTRACTOR at CONTRACTOR'S own expense.

### **PART 3 - EXECUTION (Not Applicable)**

**END OF SECTION**

**SECTION 01050  
FIELD ENGINEERING**

**PART 1 - GENERAL**

**1.1 REQUIREMENTS INCLUDED**

- A. Provide and pay for field engineering services for Project.
  - 1. Survey work required in execution of Project.
  - 2. The method of field staking for the construction of the work shall be at the option of the CONTRACTOR.
  - 3. The accuracy of any method of staking shall be the responsibility of CONTRACTOR. All engineering for vertical and horizontal control shall be the responsibility of CONTRACTOR.
  - 4. CONTRACTOR shall be held responsible for the preservation of all stakes and marks. If any stakes or marks are carelessly or willfully disturbed by CONTRACTOR, CONTRACTOR shall not proceed with any work until he has established such points, marks, lines and elevations as may be necessary for the prosecution of the work.
- B. CONTRACTOR shall retain the services of a registered land surveyor licensed in the State of Florida to identify existing control points and maintain a survey during construction.

**1.2 RELATED REQUIREMENTS**

- A. Conditions of the CONTRACT.
- B. Section 01010: Summary of Work.
- C. Section 01700: CONTRACT Closeout.

**1.3 QUALIFICATIONS OF SURVEYOR OR ENGINEER**

- A. Qualified registered Land Surveyor, acceptable to OWNER and ENGINEER.

**1.4 SURVEY REFERENCE POINTS**

- A. Locate and protect control points prior to starting site work, and preserve all permanent reference points during construction.
  - 1. Make no changes or relocations without prior written notice to ENGINEER.
  - 2. Report to ENGINEER when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.
  - 3. Require surveyor to replace Project control points which may be lost or destroyed at no additional cost to OWNER.

#### 1.5 PROJECT SURVEY REQUIREMENTS

- A. Record locations, with horizontal and vertical data, for all valves, hydrants, fittings, service saddles and other appurtenances with GPS coordinate locations on Project Record Documents.

#### 1.6 RECORDS

- A. Maintain a complete, accurate log of all control and survey work as it progresses.

#### 1.7 SUBMITTALS

- A. Submit name and address of Surveyor and professional engineer to ENGINEER.
- B. Upon completion of the project, CONTRACTOR shall submit an "As-Built" survey certified by a Florida Registered Professional Land Surveyor showing locations of all constructed items. This drawing shall be included with the project record documents.

### **PART 2 - PRODUCTS** (Not Applicable)

### **PART 3 - EXECUTION** (Not Applicable)

**END OF SECTION**

**SECTION 01150  
MEASUREMENT AND PAYMENT**

**PART 1 - GENERAL**

**1.1 REQUIREMENTS INCLUDED**

- A. Submit Applications for Payment to ENGINEER in accord with the unit price schedule established by Conditions of CONTRACT and Agreement between OWNER and CONTRACTOR.

**1.2 RELATED REQUIREMENTS**

- A. CONTRACT between OWNER and CONTRACTOR: Lump Sum Prices
- B. Conditions of the CONTRACT: Progress Payments, Retainages, and Final Payment

**1.3 GENERAL**

- A. Unit prices are to include all necessary material, labor, equipment, overhead, profit, and applicable taxes.
- B. CONTRACTOR shall be responsible for measuring quantities for all pay requests except final pay request. Before submittal of final pay request, CONTRACTOR and OWNER, or ENGINEER, will verify accuracy of record drawings and final pay request.

**1.4 SCHEDULE OF UNIT PRICES**

- A. Schedule of unit price items on the submitted Bid Form.

**1.5 PREPARATION OF APPLICATION FOR PROGRESS PAYMENTS**

- A. Application for Payment shall be AIA Document G702 and if necessary its Continuation Sheet, G703. Copies of each follow at end of this Section.
- B. Application Form:
  - 1. Fill in required information, including that for Change Orders executed prior to date of submittal of application
  - 2. Fill in summary of dollar values to agree with respective totals indicated on continuation sheets.
  - 3. Execute certification with signature of a responsible officer of CONTRACTOR.
- C. Continuation Sheets:

1. Fill in total list of all scheduled component items of Work, with item number and scheduled dollar value for each item.
2. Fill in dollar value in each column for each scheduled line item when Work has been performed or products stored.
  - a. Round off values to nearest dollar, or as specified for Schedule of Values.
3. List each Change Order executed prior to date of submission, at the end of the continuation sheets.
  - a. List by Change Order Number, and description, as for an original component item of work.

#### 1.6 SUBSTANTIATING DATA FOR PROGRESS PAYMENTS

- A. When OWNER or ENGINEER requires substantiating data, CONTRACTOR shall submit suitable information, with a cover letter identifying:
  1. Project
  2. Application number and date
  3. Detailed List of Enclosures
  4. For stored products:
    - a. Item number and identification as shown on application
    - b. Description of specific material
- B. Submit one copy of data and cover letter for each copy of application.

#### 1.7 PREPARATION OF APPLICATION FOR FINAL PAYMENT

- A. Fill in Application form as specified for progress payment.

#### 1.8 SUBMITTAL PROCEDURE

- A. Submit Application for Payment to ENGINEER at the times stipulated in the CONTRACT.
- B. Number: Five (5) copies of each Application.
- C. When ENGINEER finds Application properly completed and correct, he will transmit certificate for payment to OWNER, with copy to CONTRACTOR.

#### 1.9 RELEASE OF LIENS

- A. Submittal of **progress payments** from the CONTRACTOR shall include the original, partial releases of liens for all subcontractors who participated in the construction of this project. A partial release of Lien form, from Section 713.20, of the Florida Statutes, shall be used. Example copy of the form, **Section 01150 - 1.09.A** follows this Section's page.
  
- B. The **final application for payment** shall include final releases of liens for all subcontractors who participated in the construction of this project. A final release of Lien form, from Section 713.20, of the Florida Statutes, shall be used. Example copy of the form, **Section 01150 - 1.09.B** follows this Section's page.

**PART 2 - PRODUCTS** (Not Applicable)

**PART 3 - EXECUTION** (Not Applicable)

END OF SECTION

WAIVER AND RELEASE OF LIEN



**UPON PROGRESS PAYMENT FORM No. SECTION 01150 – 1.09.A**

The undersigned lienor, in consideration of the sum of \$ \_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on \_\_\_\_\_, (year) .

(Lienor)

By: \_\_\_\_\_

WAIVER AND RELEASE OF LIEN

**UPON FINAL PAYMENT FORM No. 01150 – 1.09.B**

The undersigned lienor, in consideration of the final payment in the amount of \$\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on\_\_\_\_\_, (year) .

(Lienor)

By: \_\_\_\_\_

# APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702 (Instructions on reverse side) PAGE ONE OF EIGHTS

TO OWNER:

PROJECT:

APPLICATION NO.:

Distribution to:

PERIOD TO:

☐ OWNER

PROJECT NOS.:

☐ ARCHITECT

☐ CONTRACTOR

VIA ARCHITECT:

CONTRACT DATE:

☐

FROM CONTRACTOR:

CONTRACT FOR:

## CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM \$

2. Net change by Change Orders \$

3. CONTRACT SUM TO DATE (Line 1 + 2) \$

4. TOTAL COMPLETED & STORED TO DATE \$  
(Column G on G703)

5. RETAINAGE:

a. % of Completed Work \$

(Columns D + E on G703)

b. % of Stored Material \$

(Column F on G703)

Total Retainage (Line 5a + 5b or

Total in Column I of G703) \$

6. TOTAL EARNED LESS RETAINAGE \$  
(Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$  
(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$

9. BALANCE TO FINISH, INCLUDING RETAINAGE \$  
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

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

CONTRACTOR:

By: \_\_\_\_\_ Date: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:

My Commission expires: \_\_\_\_\_

## ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: \_\_\_\_\_ Date: \_\_\_\_\_

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



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G702-1992

	PAGE	OF	PAGES
1	1	1	1
2	2	2	2
3	3	3	3
4	4	4	4
5	5	5	5
6	6	6	6
7	7	7	7
8	8	8	8
9	9	9	9
10	10	10	10
11	11	11	11
12	12	12	12
13	13	13	13
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17	17	17	17
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32	32	32	32
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73	73	73	73
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APPLICATION NO.:  
APPLICATION DATE:  
PERIOD TO:  
ARCHITECT'S PROJECT NO.:

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G703-1992

Section 01150-7

**SECTION 01210**  
**PRECONSTRUCTION CONFERENCES**

**PART 1 - GENERAL**

**1.1 REQUIREMENTS INCLUDED**

- A. Contractor participation in preconstruction conferences.

**1.2 RELATED REQUIREMENTS**

- A. Section 01010 - Summary of Work

**1.3 PRECONSTRUCTION CONFERENCE**

- A. Owner will schedule conference within 15 days after Notice of Award.
- B. Attendance: Owner, Engineer, Contractor, Utilities, etc.
- C. Agenda:
  - 1. Submittal of list of subcontractors, list of products, schedule of values, and progress schedule.
  - 2. Designation of responsible personnel.
  - 3. Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal requests, change orders, and Contract Closeout procedures.
  - 4. Scheduling.
  - 5. Use of premises by Contractor.
  - 6. Security and housekeeping procedures.
  - 7. Procedures for testing.

8. Procedures for maintaining record documents.

**PART 2 -PRODUCTS** (Not Applicable)

**PART 3 - EXECUTION** (Not Applicable)

END OF SECTION

## **SECTION 01220 STANDARDS AND MATERIALS**

### **PART 1 - GENERAL**

#### **1.1 STANDARDS AND REGULATIONS**

- A Industry Standards: Applicable standards of construction industry have same force and effect on performance of the work as if copied directly into Contract Documents or bound and published therewith. Standards referenced in Contract Documents or in governing regulations have precedence over non-referenced standards, insofar as different standards may contain overlapping or conflicting requirements. Comply with standards in effect as of date of Contract Documents, unless otherwise indicated.
- B Trade Union Jurisdiction (if possible): Maintain current information on jurisdictional matters, regulations, actions and pending actions; and administer/supervise performance of work in a manner which will minimize possibility of disputes, conflicts, delays, claims or losses.

#### **1.2 PRODUCTS, MATERIALS AND EQUIPMENT**

- A General Limitations: Where possible, provide entire required quantity of each generic product, material or equipment from a single source; and, where not possible to do so, match separate procurements as closely as possible. To extent selection process is under Contractor's control, provide compatible products, materials and equipment. Where available and complying with requirements, provide similar applications, and which are recommended by the manufacturers for the application indicated.
- B Product Selections: comply with following for selection of products, materials and equipment:
  - 1. Single Product Named: Provide only that product, unless determined to be unavailable, non-compatible with the work, or non-complying with requirements or governing regulations.

2. "Or Equal" Clause: Provide named product which complies with requirements, or comply with requirements for gaining approval on "substitution" to select and use an unnamed product.
- C. Installation, General: Comply with manufacturer's instructions and recommendations. Anchor securely in place, accurately located and aligned with other work. Clean and protect to ensure that products, materials and equipment will be free from damage and deterioration at time of acceptance.

### 1.3 SUBSTITUTIONS

- A. Conditions: Refer to Supplementary Conditions. Requests by Contractor will be considered when reasonable, timely, fully documented and qualifying under one or more of following circumstances:
1. Related to an "or equal" or similar provision in Contract Documents.
  2. Required product cannot be supplied in time for compliance with Contract Time requirements.
  3. Required product is not acceptable to governing authority, or determined to be non-compatible, or cannot be properly coordinated, warranted or insured, or has other recognized disability as certified by Contractor.
  4. Substantial advantage is offered Owner after deducting offsetting disadvantages including delays, additional compensation to Engineer for redesign, investigation, evaluation and other necessary services, and similar considerations.
- B. Submittals: Include full documentation, including product data, samples where appropriate, detailed performance comparisons and evaluation, testing laboratory reports where applicable, coordination information for effect on other work and time schedule, cost information for proposed change order, Contractor's general certification of recommended substitution and similar information germane to circumstance.
- C. Change Order: Approval of substitutions is possible only by change order procedure.



1.4 ALTERNATIVES (Not Applicable)

**PART 2 - PRODUCTS** (Not Applicable)

**PART 3 - EXECUTION** (Not Applicable)

END OF SECTION

**SECTION 01340**  
**SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**PART 1 - GENERAL**

1.1 REQUIREMENTS INCLUDED

- A. Submit Shop Drawings, Product Data and Samples required by Contract Documents.

1.2 RELATED REQUIREMENTS

- A. Conditions of the Contract: Definitions, and Additional Responsibilities of Parties.
- B. Section 01700: Contract Closeout
- C. Designate in the construction schedule, or in a separate coordinated schedule, the dates for submission and the dates that reviewed Shop Drawings, Product Data and Samples will be needed.

1.3 SHOP DRAWINGS

- A. Drawings shall be presented in a clear and thorough manner.
- B. Minimum sheet size: 8-1/2" x 11".
- C. Indicate at minimum the County's Bid Number and Project Number on drawing

1.4 PRODUCT DATA

- A. Preparation
  - 1. Clearly mark each copy to identify pertinent products or models.
  - 2. Show performance characteristics and capacities.
  - 3. Show dimensions and clearances required.
- B. Manufacturer's standard schematic drawings and diagrams:

1. Modify drawings and diagrams to delete information which is not applicable to the Work.
2. Supplement standard information to provide information specifically applicable to the Work.

## 1.5 CONTRACTOR RESPONSIBILITIES

- A. Review Shop Drawings, Product Data and Samples prior to submission.
- B. Determine and verify:
  1. Field measurements.
  2. Field construction criteria.
  3. Conformance with specifications.
- C. Coordinate each submittal with requirements of the Work and of the Contract Documents.
- D. Notify the Engineer in writing, at time of submission, of any deviations in the submittals from requirements of the Contract Documents.
- E. Begin no work which requires submittals until return of submittals with Engineer comments.

## 1.6 SUBMISSION REQUIREMENTS

- A. Make submittals promptly in accordance with approved schedule, and in such sequence as to cause no delay in the Work or in the work of any other contractor.
- B. Number of submittals required:
  1. Shop Drawings: Submit the number of reproductions which the Contractor requires, plus three copies which will be retained by the Engineer (2) and Purchasing (1).
  2. Product Data: Submit the number of copies which the Contractor requires, plus three which will be retained by the Engineer and Purchasing.

## 1.7 RESUBMISSION REQUIREMENTS

- A. Make any corrections or changes in the submittals required by the Engineer and resubmit until accepted.
- B. Shop Drawings and Product Data:
  - 1. Revise initial drawings or data, and resubmit as specified for the initial submittal.
  - 2. Indicate any changes which have been made other than those requested by the Engineer.

## 1.8 DISTRIBUTION

- A. Distribute reproductions of Shop Drawings and copies of Product Data which carry the Engineer stamp of acceptance to:
  - 1. Job site file
  - 2. Record Documents file
  - 3. Subcontractors
  - 4. Supplier or Fabricator

## 1.9 ENGINEER DUTIES

- A. Review submittals with reasonable promptness and in accord with schedule.
- B. Affix stamp and initials or signature, and indicate requirements for resubmittal, or acceptance of submittal.
- C. Return submittals to Contractor for distribution, or for resubmission.

## **PART 2 - PRODUCTS (Not Applicable)**

## **PART 3 - EXECUTION (Not Applicable)**

END OF SECTION

**SECTION 01390**  
**COLOR AUDIO-VIDEO PRECONSTRUCTION RECORD**

**PART 1 - GENERAL**

**1.1 SCOPE**

- A Prior to commencing work, the Contractor shall have a continuous color audio-video tape recording taken along the entire length of the Project and at all proposed construction sites within the Project area to serve as a record of pre-construction conditions.

**1.2 APPROVAL**

- A No construction shall begin prior to review and approval of the tapes covering the construction area by the Owner and Engineer. The Engineer shall have the authority to reject all or any portion of a video tape not conforming to specification and order that it be redone at no additional charge. The Contractor shall reschedule unacceptable coverage within five days after being notified. The Engineer shall designate those areas, if any, to be omitted from or added to the audio-video coverage. Tape recordings shall not be made more than 90 days prior to construction in any area. All tapes and written records shall become property of the Owner.

**1.3 PROFESSIONAL ELECTROGRAPHERS**

- A The contractor shall engage the services of a professional electrographer. The color audio-video tapes shall be prepared by a responsible commercial firm known to be skilled and regularly engaged in the business of preconstruction color audio-video tape documentation. Information to be furnished by the electrographer is the names and addresses of two references that the electrographer has performed color audio-video taping for on projects of a similar nature, one within the last 12 months.

**PART 2 - PRODUCTS**

**2.1 AUDIO-VIDEO TAPES**

- A. Audio-video tapes shall be new. Reprocessed tapes will not be acceptable. The tapes shall be high energy, extended still frame capable, video cassette.

## **PART 3 - EXECUTION**

### **3.1 EQUIPMENT**

- A. All equipment, accessories, materials and labor to perform this service shall be furnished by the Contractor.
- B. The total audio-video system shall reproduce bright, sharp, clear pictures with accurate color and shall be free from distortion, tearing, rolls or any other form of imperfection. The audio portion of the recording shall reproduce the commentary of the camera operator with proper volume, clarity and be free from distortion and interruptions.
- C. When conventional wheeled vehicles are used, the distance from the camera's lens to the ground shall not be less than 12 feet. In some instances, audio-video tape coverage may be required in areas not accessible by conventional wheeled vehicles. Such coverage shall be obtained by walking or other means approved by the Engineer.
- D. The color video camera used in the recording system shall have a horizontal resolution of 300 lines at center, a luminance signal to noise ratio of 45 dBA and a minimum illumination requirement of 24 foot-candles.

### **3.2 RECORDED INFORMATION - VIDEO**

- A. Each tape shall begin with the current date, project name and municipality and be followed by the general location, i.e., viewing side and direction of progress. The audio track shall consist of an original live recording. The recording shall contain the narrative commentary of the electrographer, recorded simultaneously with his fixed elevation video record of the zone of influence of construction.
- B. The Owner and Engineer reserve the right to supplement the audio portion of the taping as deemed necessary. A representative of the Owner or Engineer shall be selected to provide such narrative.

### 3.3 RECORDED INFORMATION - VIDEO

- A All video recordings must, by electronic means, display continuously and simultaneously generated with the actual taping transparent digital information to include the date and time of recording and coordinate locations as shown on the Drawings. The date information shall contain the month, day and year. The time information shall contain the hour, minutes and seconds. Additional information shall be displayed periodically.

Such information shall include, but not be limited to, project name, contract number, direction of travel and the viewing side. This transparent information shall appear on the extreme upper left hand third of the screen.

### 3.4 LIGHTING

- A All taping shall be done during time of good visibility. No taping shall be done during precipitation, mist or fog. The recording shall only be done when sufficient sunlight is present to properly illuminate the subjects of recording and to produce bright, sharp video recordings of those subjects.

### 3.5 AREA OF COVERAGE

- A Tape coverage shall include all surface features located within the zone of influence of construction supported by appropriate audio coverage. Such coverage shall include, but not be limited to, existing driveways, sidewalks, curbs, pavements, ditches, mailboxes, landscaping, culverts, fences, signs, and headwalls within the areacovered.

### 3.6 DOCUMENTATION

- A Provide factual presentation adequately documented and suitable for evidentiary proceedings in a court of law.

END OF SECTION

**SECTION 01410**  
**TESTING LABORATORY SERVICES**

**PART 1 - GENERAL**

**1.1 REQUIREMENTS INCLUDED**

- A CONTRACTOR shall employ and pay for the services of an Independent Testing Laboratory to perform testing specified or shown on the Drawings.
- B CONTRACTOR shall cooperate with the laboratory to facilitate the execution of its required services.
- C Employment of the laboratory shall in no way relieve CONTRACTOR'S obligations to perform the Work of the CONTRACT.

**1.2 RELATED REQUIREMENTS**

- A Conditions of the CONTRACT: Inspections and testing required by laws, ordinances, rules, regulations, orders or approvals of public authorities.
- B Respective sections of specifications: Certification of products.
- C Florida Department of Transportation Standard Specifications for Road and Bridge Construction.
- D Requirements in each specification section listed: laboratory tests required, and standards for testing. In the event any discrepancy in testing requirements, the FDOT Standard Specifications for Road and Bridge Construction shall prevail.
- E Testing Laboratory inspection, sampling and testing is required for:
  - 1. Soils Compaction Control (FBV, Density and Thickness)
  - 2. Asphalt Concrete Paving (Thickness).
  - 3. Pipe Installation. (Density)
  - 4. Concrete (compressive strength)

**1.3 LABORATORY DUTIES: TIMING**

- A Cooperate with ENGINEER and CONTRACTOR; provide qualified personnel after due notice.



- B Perform specified inspections, sampling and testing of materials and methods of construction:
  - 1. Comply with specified standards.
  - 2. Ascertain compliance of materials with requirements of Contract Documents.
- C Promptly notify ENGINEER and CONTRACTOR of observed irregularities or deficiencies of work or products which are observed during performance of services.
- D Promptly submit written report of each test and inspection; one copy each to ENGINEER, OWNER, CONTRACTOR, and one copy to Record Documents File. Each report shall include:
  - 1. Date issued.
  - 2. Project title and number.
  - 3. Testing laboratory name, address and telephonenumber
  - 4. Name and signature of laboratory inspector.
  - 5. Date and time of sampling or inspection.
  - 6. Date of test.
  - 7. Identification of product and specification section.
  - 8. Location of sample or test in the Project.
  - 9. Type of inspection or test.
  - 10. Results of test and compliance with Contract Documents.
  - 11. Interpretation of test results, when requested by ENGINEER.

#### 1.4 LIMITATION OF AUTHORITY OF TESTING LABORATORY

- A Laboratory is not authorized to:
  - 1. Release, revoke, alter or enlarge on requirements of Contract Documents.
  - 2. Approve or accept any portion of the Work.
  - 3. Perform any duties of CONTRACTOR.

#### 1.5 CONTRACTOR'S RESPONSIBILITIES

- A Cooperate with laboratory personnel, provide access to Work, to Manufacturer's operations.

- B Secure and deliver to the laboratory adequate quantities of representation samples of materials proposed to be used and which require testing.
- C Provide to the laboratory the preliminary design mix proposed to be used for concrete, and other materials mixes which require control by the testing laboratory.
- D Materials and equipment used in the performance of work under this CONTRACT are subject to inspection and testing at the point of manufacturer or fabrication. Standard specifications for quality and workmanship are indicated in the Contract Documents. ENGINEER may require the CONTRACTOR to provide statements or certificates from the manufacturers and fabricators that the materials and equipment provided by them are manufactured or fabricated in full accordance with the standard specifications for quality and workmanship indicated in the Contract Documents.
- E Furnish incidental labor and facilities:
  - 1. To provide access to Work to be tested.
  - 2. To obtain and handle samples at the Project site or at the source of the product to be tested.
  - 3. To facilitate inspections and tests.
  - 4. For storage and curing of test samples.
- F Notify laboratory sufficiently in advance of operations to allow for laboratory assignment of personnel and scheduling of tests.

**PART 2 - PRODUCTS** (Not Applicable)

**PART 3 – EXECUTION** (Not Applicable)

END OF SECTION

**SECTION 01545**  
**PROTECTION OF WORK AND PROPERTY**

**PART 1 - GENERAL**

**1.1 DESCRIPTION OF WORK**

**A. Work included:**

1. Protection and Maintenance of Public and Private Property
2. Protection of Trees and Plants
3. Protection of Work
4. Protection of County and State Roads and rights-of-ways

**PART 2 - PRODUCTS (Not Applicable)**

**PART 3 - EXECUTION**

**A Protection and Maintenance of Public and Private Property.**

1. The Contractor, insofar as his work is concerned, shall protect all property, including but not limited to, driveways, buildings, fences, trees, flowers, shrubbery, guard rails, retaining walls, and other structures and utilities along or adjacent to the line of work.
2. The Contractor, insofar as his work is concerned, shall protect, shore, brace, support and maintain all underground structures, pipes, mains, sewers, culverts, conduits, drains and their appurtenances.
3. The Contractor shall indemnify, defend and save harmless the Owner and Engineer against all damages, actual or alleged, arising out of (or incidental to) the work.

**B Protection of Work**

1. Storage of Materials

- a. The Contractor shall confine his equipment, apparatus, storage of materials and operations to limits indicated by directions of the Engineer, and shall not bring materials onto the site until they are needed for the progress of the work.
- b. For materials delivered to the Contractor prior to the need for them in the progress of the work, the Contractor shall at his own expense, provide off-site storage of materials and equipment as required. All off-site storage areas and shed shall conform to the requirements of this section. The Contractor shall provide to the Owner's inspector and/or Engineer's representative the location of all off-site storage areas. The Owner and Engineer reserve the right to inspect all off-site storage areas.

## 2. Watchmen

- a. Watchmen will not be provided by the Owner. The Contractor will be held responsible for loss of injury to persons or property where this work is involved, and shall provide such watchmen and take such precautionary measures as he may deem necessary to protect his own interests.

END OF SECTION

**SECTION 01570  
EROSION CONTROL**

**PART 1 - GENERAL**

1.1 DESCRIPTION OF WORK

A. Work included:

1. Erosion control in the project area.

**PART 2 - PRODUCTS** (Not Applicable)

**PART 3 - EXECUTION**

- A. CONTRACTOR shall adhere to provisions specified in the following Storm Water Pollution Prevention Plan (SWPPP).
- B. A copy of the SWPPP shall be on the job site.
- C. Inspections shall be conducted in accordance with the SWPPP.
- D. A qualified storm water management inspector shall conduct the inspections.
- E. Copies of inspections shall be retained on the jobsite.

Storm Water Pollution Prevention Plan (SWPPP) follows:

**EROSION AND SEDIMENT CONTROL PLAN**

**SITE DESCRIPTION AND GENERAL INFORMATION**

Project Name and Location

This Storm Water Pollution Prevention Plan pertains to the proposed sidewalk improvements along Thunderbird Road between Comet Terrace and Cougar Blvd. The project is located in Section 22, Township 34, Range 28 near the City of Sebring, in Highlands County Florida.

Owner Name and Address

Highlands County Board of County Commissioners  
Clinton Howerton, Jr., P.E., County Engineer  
505 S. Commerce Avenue  
Sebring, FL 33870

### Project Description

These projects entail the addition of a 5' wide concrete sidewalk adjacent the existing roadway. Soil disturbing tasks will include: Grading of the existing ground surface and adding a 5 foot wide concrete sidewalk. Drainage improvements including installation of a closed system and regrading existing open swales is also proposed. Silt screen, hay bales and other sediment capturing and migration reduction and erosion protection devices shall be added prior to any soil disturbing activities. Sodding or other stabilization measures of all areas will be conducted as soon as practicable in disturbed areas during and upon completion of construction.

The NRCS Highlands County Soil Survey reports the presence of Archbold Sand, Satellite Sand, & Myakka Fine Sand, soil at the project area. The Hydrologic Soil Groups are primarily A.

### Runoff Coefficient

The final site conditions will be a mixture of pervious and impervious areas. The resulting runoff coefficient is estimated to be approximately 0.53.

### Sequence of Major Activities

The order of major activities will be as follows:

1. Install silt screen and perimeter protection as shown on plans.
2. Clearing & Grubbing of vegetation.
3. Conduct construction of the 5' concrete sidewalk.
4. Installation of drainage pipes and inlet.
5. Replacement of concrete driveways and road intersection areas.
4. Stabilize cleared areas within 14 days of last disturbance if runoff is not captured by stormwater swales.
5. Complete grading and install permanent sod.
6. When all construction is complete, stabilize (e.g. sod, seed/mulch, etc.) any remaining disturbed areas.

Sufficient precautions shall be taken to prevent pollution of streams, canals, lakes, reservoirs, wetlands, and other water impoundments. Also, operations shall be conducted and scheduled so as to avoid pollution or siltation of streams, water bodies, etc.

The existing project area has some roadside swales however additional swales will be constructed. Runoff generated by a storm event eventually flows to Lake Jackson.

## **STORMWATER POLLUTION PREVENTION**

### Erosion and Sediment Transport Prevention

The work specified in this section consists of measures required to control erosion and transport of sediments within and from the project area, so as to prevent the degradation of receiving waters, detrimental effects on public or private property adjacent to the project and damage within the project area. These measures will include the construction and maintenance of temporary and permanent erosion controls.

Construction operations shall be restricted to those areas where it is necessary to perform filling or excavation to accomplish the work shown on the drawings and to those areas which must be entered to construct temporary or permanent structures. As soon as the conditions will permit, rivers, streams, impoundment, stormwater storage and conveyance systems and any onsite receiving water bodies shall be promptly cleared of all obstructions placed therein or caused by construction operations. Under no conditions shall runoff from unstabilized areas be directed or be allowed to discharge directly to Waters of the State or across the site's property limits without onsite treatment.

### Erosion Practices

Permanent erosion control features shall be incorporated into the project at the earliest practical time. Temporary control features will be used to correct conditions that develop during construction which were not foreseen at the time of design to control erosion prior to the time it is practical to construct permanent control features.

Temporary erosion control may be used in controlling erosion in areas where conditions not under the control of the contractor preclude completion of a section of a project in a continuous manner, and for controlling erosion in areas where construction operations must be performed subsequently will cause damage to permanent erosion control features. Temporary erosion and water pollution control features shall consist of, but not be limited to, grass, temporary mulching, sandbagging, sediment basins, sediment checks/earth ditch checks, berms, floating turbidity barriers, hay bales and silt fence.

### Stabilization Practices

Temporary Stabilization - Soil stock piles and disturbed portions of the site where construction activity temporarily ceases for at least 21 days will be stabilized within 14 days from the last construction activity in that area. These areas shall be stabilized with temporary seed and mulch. The surface areas of unprotected erodible earth exposed by clearing and grubbing, excavation or filling operations shall be kept to a minimum as practicable.

Permanent Stabilization - All disturbed portions of the site where construction activities have permanently ceased will be stabilized by sod or seed and mulch in accordance with the Landscaping Plans and/or Construction Plans.

### Structural Practices

Staked Silt Screens - Will be installed down gradient of any soil disturbance to protect offsite areas from any possible adverse effects from sediments. Sediment will be removed from the upstream side of any silt screen once the accumulated sediment reaches 1/3 the height of the silt screen. Any sediment deposits or soil disturbance created during the installation and removal of silt screen shall be dressed to conform to the finished grade. The silt screen shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. Where deficiencies exist, additional silt fences shall be installed or replaced. Attachment of silt screen to existing trees will not be permitted unless approved by Project Engineer.

### Non-stormwater discharges

The following discharges are associated with this construction project:

- Discharges from fire fighting activities.
- Fire hydrant flushings.

- Potable water sources (including waterline flushings).
- Uncontaminated ground water (including dewatering ground water infiltration).
- Foundation or footing drains where flows are not contaminated with process materials such as solvents.
- Irrigation water.
- Exterior building wash downs.
- Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred and where detergents are not used.
- Air conditioning condensate.
- Springs, riparian habitats and wetlands.

Runoff from the above mentioned discharges will be directed to a temporary sediment basin prior to discharge to the receiving water. The location of the temporary sediment basin will be dictated by the amount and type of discharge anticipated. Due to the nature of construction activities the location of temporary basins is a dynamic function and will be determined by the on site contractor supervisor.

#### Receiving Water

Lake Jackson will ultimately receive the runoff from this site at approximately 27° 30' 06.98"N, 081° 28' 53.15"W.

***Note: The following controls concern day-to-day activities on the site. The site superintendent is responsible for seeing that they are carried out appropriately.***

#### Waste Disposal

Waste Materials - All waste materials will be collected and stored in metal dumpsters and then hauled to an approved disposal site. The dumpsters will meet all county and state solid waste management regulations. All trash and construction debris from the site will be deposited in the dumpster. No construction waste will be buried on the site. All personnel will be instructed in the correct procedure for waste disposal. Employee waste and other loose materials, e.g., cups, cans, bags, etc., will be collected so as to prevent release of "floatables" during runoff events.

Hazardous Waste - All hazardous waste materials will be disposed of in the manner specified by local or state regulations, or by the manufacturer.

Sanitary Waste - All sanitary waste will be collected from the portable units in a timely manner meeting all local and state regulations.

#### Offsite Vehicle Tracking

Monitoring of offsite tracking of sediments at the entrances is essential where silt fence will not be placed to enable access to the site. Daily inspections and street sweeping of the construction entrance areas are required to prevent offsite tracking of sediments. If it appears that significant amounts of sediment are being tracked off the site, it is recommended to dislodge the soil, sediment and dirt before the vehicles leave the site. Any dump trucks hauling material to and from the site shall be covered by a tarpaulin.



### Timing of Control Measures

Areas where the ground has been disturbed and construction activities temporarily will cease for more than 21 days shall be stabilized with a temporary seed and mulch within 14 days of the last disturbance. Once construction activity ceases permanently in an area where the ground has been disturbed that area will be stabilized with sod or other suitable stabilization materials. After the site is stabilized, all excess sediments and debris will be removed from the ponds receiving direct runoff from the area.

## **CERTIFICATION OF COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS**

The onsite practices shall comply with this stormwater pollution prevention plan as well as reflect the requirements of the:

1. FDEP's NPDES Generic Permit for Construction Activities, 62-621.300(4), F.A.C.)
2. EPA 832-R-92-005; Stormwater Management for Construction Activities.
3. All state requirements of stormwater management systems under chapters 40D-4, 40D-40 and 40D-400 of the Florida Administrative Code, as administered by the Southwest Florida Water Management District.

## **MAINTENANCE/INSPECTION PROCEDURES**

### Erosion and Sediment control Inspection and Maintenance Practices

The following practices will be utilized to maintain erosion and sediment controls:

All control measures will be inspected at least once every seven (7) days and within 24 hours of any rainfall exceeding 0.50 inches. A maintenance inspection report will be made after each inspection. These inspection reports will be kept as a part of the stormwater pollution prevention plan for at least three (3) years from the date the site is finally stabilized. A copy of the inspection report form is attached.

All measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of its reporting.

The swales, ditches and drainage structures will be inspected for depth of sediments. Sediments will be removed at the completion of the construction.

Temporary seeding and permanent sodding or seeding/mulching will be inspected for bare spots, washouts, and healthy growth. Any problems will be corrected.

A qualified person will be designated to perform the inspections and fill out the inspection and maintenance report.

The silt screen shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. Where deficiencies exist, additional silt fences shall be installed or replaced. Sediment will be removed from the upstream side of any silt screen once the accumulated sediment reaches 1/3 the height of the silt screen. Any sediment deposits or

soil disturbance created during the installation and removal of silt screen shall be dressed to conform to the finished grade.

## **INVENTORY OF BUILDING MATERIALS EXPECTED TO BE PRESENT ONSITE**

Materials present onsite during construction will include those normally associated with this type of construction:

Concrete, steel reinforcing bars and related materials, lumber, paints, petroleum based products.

## **MATERIAL MANAGEMENT (POLLUTION PREVENTION) PRACTICES**

The following material management practices will be used to reduce the risk of spills or other accidental exposure of materials and substances to stormwater runoff:

### General Practices

The following general practices will be followed onsite during the construction project:

Sufficient precautions should be taken to prevent pollution of water bodies directly or indirectly with fuels, oils, bitumens, calcium chloride, or other harmful materials

An effort will be made to store only enough products required for this project.

All materials stored onsite will be stored in a neat, orderly manner in their appropriate containers and, if possible, under a roof or other enclosure.

Products will be kept in their original containers with the original manufacturer's label.

Substances will not be mixed with one another unless recommended by the manufacturer.

Whenever possible, all of a product will be used before disposing of the container.

Manufacturers' recommendations for proper use and disposal will be followed.

The site will be inspected daily to ensure proper use and disposal of materials.

### Hazardous Products

The following practices will be utilized to reduce the risks associated with hazardous materials:

Products will be kept in their original containers unless they are not resealable.

Original labels and material safety data will be retained; they contain important product information.

If surplus product must be disposed of, manufacturers' or local and state recommended methods for proper disposal will be followed.

### Product Specific Practices

The following product specific practices will be followed onsite:

Petroleum products - All onsite vehicles will be monitored for leaks and receive regular preventive maintenance to reduce the chance of leakage. Petroleum products will be stored in tightly sealed containers that are clearly labeled. Any asphalt substances used onsite will be applied according to the manufacturer's recommendations.

Paints - All containers will be tightly sealed and stored when not in use. Excess paint will not be discharged to the storm sewer, pond system, or receiving water but will be properly disposed of according to manufacturers' instructions or state and local regulations.

Concrete Trucks - Concrete trucks will not be allowed to wash out or discharge surplus concrete or drum wash water on the site.

### Spill Prevention and Cleanup

In addition to the materials management practices discussed in the previous sections of this plan, the following practices will be followed for spill prevention and cleanup:

Manufacturer's recommended methods for spill cleanup will be clearly posted and site personnel will be made aware of the procedures and the locations of the information and cleanup supplies.

Materials and equipment necessary for spill cleanup will be kept in the material storage area that is onsite. Equipment and materials will include brooms, dust pans, gloves and plastic and metal trash containers, etc. specifically for this purpose.

All spills will be cleaned up immediately after discovery.

The spill area will be kept well ventilated and personnel will wear appropriate protective clothing to prevent injury from contact with a hazardous substance.

Spills of toxic or hazardous material will be reported to the appropriate state or local government agency, regardless of the size.

The spill prevention plans will be adjusted to include measures to prevent this type of spill from reoccurring and how to clean up this type of spill if there is another one. A description of the spill, its cause, and the cleanup measures will also be included.

Portable Fuel Tanks: If portable fuel tanks are positioned on the project site, they will be placed on a drip pan or similar impermeable liner. The intent is to preclude any fuel pollutants from entering the soil and/or storm water management system.

STORM WATER POLLUTION PREVENTION CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

J.D. Langford, Jr., P.E.  
Assistant County Engineer  
Highlands County Board of County Commissioners  
505 S. Commerce Avenue  
Sebring, FL 33870

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

CONTRACTOR'S CERTIFICATION

I certify under penalty of law that I understand, and shall comply with, the terms and conditions of the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities and this Erosion and Sediment Control Plan preparedthereunder.

**Signature/Date:**

Name:

Company Name:

Address:

Telephone No:

Responsibility:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Site Contractor

## **Stormwater Pollution Prevention Plan Inspection Report Form**

Inspections must occur at least once a week and within 24 hours of the end of a storm event that is 0.50 inches or greater.

**Project Name:** Thunderbird East & Thunderbird West Sidewalk Extensions. Projects # 15009 & 15010

**FDEP NPDES Stormwater Identification Number:** FLR10SL59-001

Location	Rain data	Type of control (see below)	Date installed / modified	Current Condition (see below)	Corrective Action / Other Remarks

**Condition Code:**

**G = Good**

**M = Marginal, needs maintenance or replacement soon**

**P = Poor, needs immediate maintenance or replacement**

**C = Needs to be cleaned**

**O = Other**

**Control Type Codes**

1. Silt Fence	10. Storm drain inlet protection	19. Reinforced soil retaining system	28. Tree protection
2. Earth dikes	11. Vegetative buffer strip	20. Gabion	29. Detention pond
3. Structural diversion	12. Vegetative preservation area	21. Sediment Basin	30. Retention pond
4. Swale	13. Retention Pond	22. Temporary seed / sod	31. Waste disposal / housekeeping
5. Sediment Trap	14. Construction entrance stabilization	23. Permanent seed / sod	32. Dam
6. Check dam	15. Perimeter ditch	24. Mulch	33. Sand Bag
7. Subsurface drain	16. Curb and gutter	25. Hay Bales	34. Other
8. Pipe slope drain	17. Paved road surface	26. Geotextile	
9. Level spreaders	18. Rock outlet protection	27. Rip-rap	

**Inspector Information:**

**Name:** John Doe

**Qualification:** Certified NPDES Inspector, No. 52385

**Date:** 1/1/201\_

The above signature also shall certify that this facility is in compliance with the Stormwater Pollution Prevention Plan and the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities if there are not any incidents of non-compliance identified above.

---

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

---

**Name (Responsible Authority)**

---

**Date**

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**SECTION 01700**  
**CONTRACT CLOSEOUT**

**PART 1 - GENERAL**

**1.1 REQUIREMENTS INCLUDED**

- A. Close out Procedures.
- B. Final Cleaning.
- C. Project Record Documents.
- D. Warranties and Bonds.

**1.2 RELATED REQUIREMENTS**

- A. Instructions to Bidders: Bid or Proposal Bonds.
- B. Conditions of the Contract: Performance Bond and Payment Bond.
- C. Supplementary conditions:
- D. Conditions of the Contract: General Warranty of Construction.

**1.3 CLOSEOUT PROCEDURES**

- A. Comply with procedures stated in Section 00700 General Conditions of the Contract for issuance of Certificate of Substantial Completion.
- B. When Contractor considers Work has reached final completion, submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Engineer's review.

**1.4 FINAL CLEANING**

- A. Execute prior to final inspection.

- B. Clean site; rake clean other surfaces.

## 1.5 PROJECT RECORD DOCUMENTS

- A. Contractors responsibility to keep record documents.
- B. Store documents separate from those used for construction.
- C. Keep documents current; do not permanently conceal any work until required information has been recorded.
- D. At Contract closeout, submit documents with transmittal letter containing date, County Bid Number & Title, Project Number & Title, Contractor's name and address, list of documents, and signature of Contractor.

## 1.6 WARRANTIES AND BONDS

- A. Provide duplicate, notarized copies, Execute Contractor's submittals and assemble documents executed by subcontractors, suppliers, manufacturers.

## **PART 2 - PRODUCTS** (Not Applicable)

## **PART 3 - EXECUTION** (Not Applicable)

END OF SECTION

**SECTION 01720**  
**PROJECT RECORD DOCUMENTS**

**PART 1 - GENERAL**

**1.1 REQUIREMENTS INCLUDED**

- A. Maintain at the site for the Owner one record copy of:
  - 1. Drawings
  - 2. Specifications
  - 3. Addenda
  - 4. Change Order and other Modifications to the Contract
  - 5. Engineer Field Order or Written Instructions
  - 6. Approved Shop Drawings, Product Data and Samples

**1.2 RELATED REQUIREMENTS**

- A. Section 01340: Shop Drawings, Product Data and Samples

**1.3 MAINTENANCE OF DOCUMENTS AND SAMPLES**

- A. Store documents and samples in Contractor's office apart from documents used for construction.
- B. File documents and samples in accordance with CSI/CSC format.
- C. Maintain documents in a clean, dry, legible condition and in good order. Do not use record documents for construction purposes.
- D. Make documents and samples available at all times for inspection by Engineer.

**1.5 RECORDINGS**

- A. Label each document "Project Record: in neat large printed letters.
- B. Record information concurrently with construction progress.

1. Do not conceal any work until required information is recorded.
- C. Drawings: Legibly mark to record actual construction:
1. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
  2. Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure.
  3. Field changes of dimension and detail.
  4. Changes made by Field Order or by Change Order.
  5. Details not on original contract drawings.
- D. Specifications and Addenda: Legibly mark each Section to record:
1. Manufacturer, Trade name, Catalog Number, and Supplier of each Product and item of equipment actually installed.
  2. Changes made by Field Order or by Change Order.

#### 1.6 SUBMITTAL

- A. At Contract close-out, deliver Record Documents to Engineer for the Owner.
- B. Accompany submittal with transmittal letter in duplicate, containing:
1. Date
  2. Bid Number & Title, Project Number & Title
  3. Contractor's name and address
  4. Title and number of each Record Document
  5. Signature of Contractor or his authorized representative.

**PART 2 - PRODUCTS** (Not Applicable)

**PART 3 - EXECUTION** (Not Applicable)

END OF SECTION

## SECTION 02200 EARTHWORK

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including Section-00700 Standard General and Section-00800 Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

#### 1.2 DESCRIPTION OF WORK

- A. Earthwork consists of all excavation and filling involved in the construction of the sidewalk.

#### 1.3 QUALITY ASSURANCE

- A. **Codes and Standards:** Perform excavation work in compliance with applicable requirements of governing authorities having jurisdiction.
- B. **Testing and Inspection Service:** Owner will engage soil testing and inspection service for quality control testing during earthwork operations.

#### 1.4 SUBMITTALS

- A. **Test Reports-Excavating:** Submit field density test reports directly to Engineer from the testing services, with copy to Contractor.

#### 1.5 JOB CONDITIONS

- A. **Existing Utilities:** Locate existing underground utilities in areas of work. If utilities area to remain in place, provide adequate means of protections during earthwork operations.
- B. Should uncharted, or incorrectly charted, piping or other utilities be encountered during excavation, consult utility owner immediately for directions. Cooperate with Owner and Utility Companies in keeping respective services and facilities in operation. Repair damaged utilities to satisfaction of utility owner.

- C. Do not interrupt existing utilities serving facilities occupied and used by Owner or others, except when permitted in writing by Engineer and then only after acceptable temporary utility services have been provided.

## **PART 2 - PRODUCTS**

### **2.1 SOIL MATERIALS**

#### **Definitions:**

- A. **Satisfactory soil** materials are defined as those complying with American Association of State Highway and Transportation Officials (AASHTO) M145, soil classification Groups A-1, A-2-4, A-2-5, and A-3.
- B. **Unsatisfactory-soil** materials are those defined in AASHTO M145 soil classification Groups A-2-6, A-2-7, A-4, A-5, A-6, and A-7; also peat and other highly organic soils.
- C. **Sub-base Material:** Naturally or artificially graded mixture of natural or crushed gravel, crushed stone, crushed slag, natural or crushed sand.
- D. **Drainage Fill:** Washed, evenly graded mixture of crushed stone, or crushed or uncrushed gravel, with 100% passing a 1-1/2" sieve and not more than 5% passing a No. 4 sieve.
- E. **Backfill and Fill Materials:** Satisfactory soil materials free of clay, rock or gravel larger than 2" in any dimension, debris, waste, frozen materials, vegetable and other deleterious matter. Backfill behind walls and above footings shall consist of clean fine sand.

## **PART 3 - EXECUTION**

### **3.1 EXCAVATION**

Excavation consists of removal and disposal of material encountered when establishing required finish grade elevations.

- A. **Earth excavation** includes removal and disposal of pavements and other obstructions visible on ground surface, underground structures and utilities indicated to be demolished and removed, material of any classification

indicated in data on subsurface conditions, and other materials encountered that are not classified as rock excavation or unauthorized excavation.

- B. **Unauthorized excavation** consists of removal of materials beyond indicated sub-grade elevations or dimensions without specific direction of Engineer. Unauthorized excavation, as well as remedial work directed by Engineer, shall be at Contractor's expense.
- C. **Additional Excavation:** When excavation has reached required sub-grade elevations, notify Engineer who will make an inspection of conditions.

If unsuitable bearing materials are encountered at required sub-grade elevations, carry excavations deeper and replace excavated material as directed by Engineer.

Removal of unsuitable material and its replacement as directed will be paid on basis of contract conditions relative to changes in work.

- D. **Material Storage:** Stockpile satisfactory excavated materials where directed, until required for backfill or fill. Place, grade, and shape stockpiles for proper drainage.

Locate and retain soil materials away from edge of excavation.

Dispose of excess soil material and waste materials as herein specified.

- E. **Excavation for Pavements:** Cut surface under pavements to comply with cross-sections, elevations and grades as shown.

### 3.2 COMPACTION

- A. **General:** Control soil compacting during construction providing minimum percentage of density specified for each area classification.
- B. **Percentage of Maximum Density Requirements:** Compact soil to not less than the following percentages of maximum dry density for soils which exhibit a well-defined moisture density relationship determined in accordance with ASTM D 1557; and not less than the following percentages of relative density, determined in accordance with ASTM D 2049, for soils which will not exhibit a well-defined moisture-density relationship.
  - 1. **Unpaved Areas:** Compact top 6" of sub-grade and each layer of backfill or fill material at 90% maximum dry density.

2. **Pavements:** Compact top 12" of sub-grade and each layer of backfill or fill material at 98% maximum dry density or 93% relative dry density for cohesive soil material.
- C. **Moisture Control:** Where sub-grade or layer of soil material must be moisture conditioned before compaction, uniformly apply water to surface of sub-grade, or layer of soil material, to prevent free water appearing on surface during or subsequent to compaction operations.

Remove and replace or scarify and air dry, soil material that is too wet to permit compaction to specified density.

1. Soil material that has been removed because it is too wet to permit compaction may be stockpiled or spread and allowed to dry.
2. Assist drying by dicing, harrowing, or pulverizing until moisture content is reduced to a satisfactory value.

### 3.3 BACKFILL AND FILL

- A. **General:** Place acceptable soil material in layers to required sub-grade elevations, for each area classification listed below.
1. **Under grassed areas,** use satisfactory excavated or borrow material.
  2. **Under walks and pavements,** use sub-base material, or satisfactory excavated or borrow material, or combination of both.
- B. **Ground Surface Preparation:** Remove vegetation, debris, unsatisfactory soil materials, obstructions, and deleterious materials from ground surface prior to placement of fills.

When existing ground surface has a density less than that specified under "Compaction" for particular area classification, break up ground surface, pulverize, moisture-condition to optimum moisture content, and compact to required depth and percentage of maximum density.

- C. **Placement and Compaction:** Place backfill and fill materials in layers not more than 12" in loose depth for material compacted by heavy compaction equipment and not more than 8" in loose depth for material compacted by hand-operated tampers. Avoid use of heavy equipment close to existing



wells. Before compaction, moisten or aerate each layer as necessary to provide optimum moisture content. Compact each layer to required percentage of maximum dry density or relative dry density for each area classification. Do not place backfill or fill material on surfaces that are muddy or contain frost.

### 3.4 GRADING

- A. **General:** Uniformly grade areas within limits of grading under this section, including adjacent transition areas. Smooth finished surface within specified tolerances, compact with uniform levels or slopes between points where elevations are shown, or between such points and existing grades.
- B. **Grading:** Grade areas to prevent ponding.

Finish surfaces free from irregular surface changes, and as follows:

- 1. **Unpaved Areas:** Finish areas to receive topsoil to within not more than 0.10' above or below required sub-grade elevations.
  - 2. **Pavements:** Shape surfaces of areas under pavement to line, grade and cross-section with finish surface not more than 1/2" above or below required sub-grade elevation.
- D. **Compaction:** After grading compact sub-grade surfaces to the depth and percentage of maximum density for each area classification.

### 3.5 PAVEMENT SUB-BASE COURSE

- A. **General:** Sub-base course consists of placing sub-base material, in layers of specified thickness, over sub-grade surface to support a pavement base course.
- B. **Grade Control:** During construction, maintain lines and grades including crown and cross-slope of sub-base course.
- C. **Placing:** Place sub-base course material on prepared sub-grade in layers of uniform thickness conforming to indicated cross-sections and thickness. Maintain optimum moisture content for compacting sub-base material during placement operations.

When a compacted sub-base course is shown to be 6" thick or less, place material in a single layer. When shown to be more than 6" thick, place

material in equal layers, except no single layer more than 6" or less than 3" in thickness when compacted.

### 3.6 FIELD QUALITY CONTROL

**Quality Control Testing During Construction:** Allow testing service to inspect and approve sub-grades and fill layers before further construction work is performed.

- A. Perform field density tests in accordance with ASTM D-2922 (nuclear density method) or ASTM D-1556 (sand cone method) or ASTM D-2167 (rubber balloon method), as applicable.
- B. Paved areas: Make at least one field density test of sub-grade for every 2500 square feet of paved area, but in no case less than 3 tests. (In each compacted fill layer, make one field density test for every 2,500 sq. ft. of paved area, but in no case less than 3 tests.)
- C. Unpaved Areas: (In each compacted fill layer, make one field density test for every 5,000 sq. ft. of unpaved area, but in no case less than 3 tests.)

If in opinion of Engineer, based on testing service reports and inspection, sub-grade or fills which have been placed are below specified density, provide additional compaction and testing at no additional expense.

### 3.7 MAINTENANCE

- A. **Protection of Graded Areas:** Protect newly graded areas from traffic and erosion. Keep free of trash and debris.

Repair and reestablish grades in settled, eroded, and rutted areas to specified tolerances.

- B. **Reconditioning Compacted Areas:** Where completed compacted areas are disturbed by subsequent construction operations or adverse weather, scarify surface, reshape, and compact to required density prior to further construction.

### 3.8 DISPOSAL OF EXCESS AND WASTE MATERIALS

- A. Removal from Owner's Property: Remove waste materials, including unacceptable excavated material, trash and debris, and dispose of it off Owner's property.

### 3.9 EARTHWORK AND SITE GRADING

This section encompasses earthwork in areas inside and outside the building limits to obtain required finish contours and elevations. Also, sub-base materials for pavements within these areas are included in this section.

- A. **General:** Definitions of soil materials are given as a basis for establishing satisfactory and unsatisfactory categories. These are specified to the (AASHTO) American Association of State Highway and Transportation Official standards, and should be reviewed for applicability to local project conditions. Other sources for defining acceptable materials are State, County, and Municipal highway engineering departments which can provide information on local materials and conditions. Specific soils, materials and gradation requirements must be added to these specifications.

1. **"Sub-grade"** as used in this section refers to the compacted soil immediately below the slab or pavement system.
2. **"Sub-base"** as used in this section refers to the compacted soil layer used in pavement systems between the sub-grade and the pavement base course material.

Compaction requirements are based on the optimum moisture-density relations or relative-density for satisfactory soil materials, and should be reviewed for applicability to local project conditions. Percentages specified are suggested minimums which may be adjusted to suit project requirements.

- B. The drawings show the following information related to earthwork and site grading:
1. The finished plan shall comply with the spot elevations and typical sections.

**END OF SECTION**

**SECTION 02591  
(MOT) MAINTENANCE OF TRAFFIC**

**PART 1 - GENERAL**

**1.1 WORK INCLUDED**

- A. Work included in this Section consists of maintaining public highway traffic within limits of project for the duration of the construction period, including any temporary suspension of work. It shall also include construction and maintenance of any necessary detour facilities; furnishing, installing and maintaining of traffic control and safety devices during construction, control of dust, and any other special requirements for safe and expeditious movement of traffic may be called for on Drawings.
- B. The term (MOT) "Maintenance of Traffic" as used herein, shall include all such facilities, devices, traffic control personnel, and operations as are required for the safety and convenience of the public as well as for minimizing public nuisance.

**1.2 APPLICABLE STANDARDS (Reference Specifications and Standards)**

- A. Standard Specifications for Road and Bridge Construction, (latest edition), issued by Florida Department of Transportation, specified hereinafter as DOT Spec. All references to "Department" in referenced standard shall be construed to mean "Owner" for this Work.
- B. Manual on Traffic Control and Safe Practices for Street and Highway Construction, Maintenance and Utility Operations, FDOT.

**1.3 SUBMITTAL**

- A. Within 30 days after the date of the Notice to Proceed, Contractor shall submit for approval, details of methods it proposes to use for control of traffic.

## **PART 2 - PRODUCTS**

### **2.1 MATERIALS**

- A. Construction materials shall meet the requirements of the applicable Sections of these Specifications.

## **PART 3 - EXECUTION**

### **3.1 TRAFFIC CAPACITY**

- A. Control construction activities such that at least one traffic lane on two-lane roads and one lane in each direction on four or more lane roads will remain open.

### **3.2 SPECIFIC REQUIREMENTS**

- A. Maintain roadway surfaces in accordance with DOT Spec 102-2.1.
- B. Control traffic in accordance with DOT Spec 102-5.
- C. Construct, maintain and remove detours in accordance with DOT Spec 102-6.
- D. Control dust in conformance with DOT Spec 204-6.6.

**END OF SECTION**

## **SECTION 02931 SODDING**

### **PART 1 - GENERAL**

#### **1.1 DESCRIPTION OF WORK**

- A. The work specified in this section consists of the establishing of a stand of grass by the furnishing and placing of grass sod, and fertilizing, watering and maintaining the sodded areas such as to assure a healthy stand of grass. All areas disturbed during construction are to be sodded.

#### **1.2 REQUIREMENTS INCLUDED**

- A. Sod
- B. Preparation of Ground
- C. Placement of Sod
- D. Fertilizer
- E. Maintain Sod

#### **1.3 REFERENCE STANDARDS**

- A. (FDOT) Florida Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition.

### **PART 2 - PRODUCTS**

#### **2.1 SOD**

- A. Sod shall be Argentine Bahia (or similar adjacent sod type), well matted with roots except in maintained yards containing other types of sod, in which case the contractor shall match existing sod. The sod shall be sufficiently thick to secure a dense stand of live grass. The sod shall be live, fresh and uninjured at the time of planting. It shall have a soil mat of sufficient thickness adhering firmly to the roots to withstand all necessary handling. It shall be free of weeds and other grasses. It shall be planted as soon as possible after being dug and shall be shaded and kept moist from the time it is dug until it is planted.

#### **2.2 FERTILIZER**

- A. Fertilizer shall be Type I per Department of Transportation specifications.

### **PART 3 - EXECUTION**

#### **3.1 PREPARATION OF GROUND**

- A. All areas shall be sodded.
- B. The areas over which the sod is to be placed shall be scarified or loosened to suitable depth. On areas where the soil is sufficiently loose, particularly on shoulders and fill slopes, the Engineer may, at his discretion, authorize the elimination of the ground preparation.

#### **3.2 FERTILIZING**

- A. The fertilizer shall be spread uniformly in an initial application of 400-500 pounds per acre. A second application of 400-500 pounds per acre shall be applied within 90 calendar days.
- B. Immediately after the fertilizer is spread, it shall be mixed to a depth of 4 inches on the shoulder and 2 inches on steep slopes.

#### **3.3 PLACING SOD**

- A. Sodding shall be incorporated into the project at the earliest practical time in the life of the contract. No sod which has been cut for more than 72 hours shall be used. Any sod which is not planted within 24 hours after cutting shall be stacked in an approved manner and maintained properly moistened.
- B. Sodding shall not be performed when weather and soil conditions are unsuitable for proper results.
- C. On areas where the sod may slide the sod shall be pegged, with pegs driven through the sod block into firm earth, at suitable intervals.
- D. Any pieces of sod which, after placing, show an appearance of extreme dryness shall be removed from the work.
- E. Sod will be rolled with an approved mechanical device designed for rolling sod.

- F. Any sodded areas existing prior to construction which are disturbed by the construction shall be re-sodded and returned to their original condition with like kind and variety of sod as approved by the ENGINEER in the field.
- G. All disturbed areas within the public right-of-way in front of developed lots shall be sodded.

#### 3.4 WATERING

- A. The areas on which the sod is to be placed shall contain sufficient moisture for optimum results after being placed. The sod shall be kept in a moist condition for no less than two weeks. The moistened condition shall extend at least to the full depth of the rooting zone. Water shall not be applied, however, when there is danger of a freezing condition.

#### 3.5 MAINTENANCE AND GUARANTEE

- A. Maintain and guarantee the work of this section for a period of 30 days from date of Total Completion.

**END OF SECTION**



## **SECTION 03000 CONCRETE SIDEWALKS**

### **PART 1-GENERAL**

#### **1.01 DESCRIPTION**

The work specified in this section consists of the construction of concrete sidewalks and walkways, in accordance with these specifications, and in conformity with the lines, grades, dimensions and notes shown in the plans.

### **PART 2-PRODUCTS**

- 2.1 Concrete: All work under this Section shall be of Class I Concrete.
- 2.2 Reinforcement: Where the plans call for steel reinforcement to be placed in the sidewalk, such reinforcement shall conform to the requirements of the (FDOT) Florida Department of Transportation, (SSR&BC) Standard Specifications for Road and Bridge Construction (latest edition).
- 2.3 Forms: Forms for this work shall be made of either wood or metal and shall have a depth equal to the plan dimensions for the depth of concrete being deposited against them. They shall be straight, free from warp or bends, and of sufficient strength, when staked, to resist the pressure of the concrete without deviation from line and grade. Forms shall be cleaned each time they are used and shall be oiled or saturated with water prior to placing the concrete.
- 2.4 Foundation: Fill areas including cut areas under the sidewalk which have been excavated more than six inches below the bottom of sidewalk shall be compacted to a minimum of 95 percent of AASHTO T-99 density. The area to be compacted is defined as that area directly under the sidewalk and the foot beyond each side of the sidewalk when right of way allows.
- 2.5 Joints:
  - A. Expansion Joints: Expansion joints between the sidewalk and the curb or driveway or at fixed objects and sidewalk intersections shall be ½ inch joints, formed with preformed joint filler.
  - B. Contraction Joints: Types: Contraction joints may be of the open type or may be sawed.
    - 1. Open-Type Joints: Open-type contraction joints shall be formed by staking a metal bulkhead in place and depositing

the concrete on both sides. After the concrete has set sufficiently to preserve the width and shape of the joint, the bulkhead shall be removed. After the sidewalk has been finished over the joint, the slot shall be edged with a tool having a ½ inch radius.

2. Sawed Joints: If the Contractor elects to saw the contraction joints, a slot approximately 3/16 inch wide and not less than 1/2 inches deep shall be cut with a concrete saw after the concrete has set, and within the following periods of time:
  - a. Joints at not more than 30-foot intervals within 12 hours after finishing.
  - b. Remaining joints within 96 hours after finishing.

### **PART 3-EXECUTION**

- 3.1 Placing: The concrete shall be placed in the forms and tamped and spaded to prevent honeycomb and until the top of the structure can be floated smooth and the edges rounded to the radius shown in the plans.
- 3.2 Finishing.
  - A. Screeding: The concrete shall be struck-off by means of a wood or metal screed, used perpendicular to the forms, in order to obtain the required grade and remove surplus water and laitance.
- 3.3 Surface Requirements: The concrete shall be given a broom finish. The surface variations shall not be more than 1/8 inch under a ten-foot straightedge, nor more than 1/4 inch on a five-foot transverse section. The edge of the sidewalk shall be carefully finished with an edging tool having a radius of 1/2 inch. At all curb cut ramps or sidewalk ramps, a finish shall be applied which is appropriate to meet the requirements of the (ADA) Americans with Disabilities Act.
- 3.4 522-8 Curing: The concrete shall be cured as provided in SSR&BC.

### **END OF SECTION**

**SECTION 03010  
CONCRETE WORK  
(DRIVEWAY CUTTING AND REPLACEMENT)**

**PART 1 - GENERAL**

**1.1 DESCRIPTION**

The work of this section shall include saw cutting existing driveways for installation of sidewalk. The driveways shall be saw cut to the minimum dimension possible to allow removal of the driveway, compaction of the backfill and placement of the sidewalk to (ADA) Americans with Disabilities Act standards. Shell material shall be placed in each driveway so that each driveway is accessible at the end of each work day. All driveways shall be re-poured within one (1) working days of being cut.

**PART 2 - PRODUCTS**

- A. Aggregates:
  - 1. Coarse aggregate shall consist of crushed stone or gravel. It shall be clean, hard, tough, durable pieces free from injurious amounts of soft friable, thin elongated or laminated pieces, soluble salts, organic or other deleterious matter.
  - 2. Fine aggregate shall consist of either natural sand or stone sand, composed of sound particles of approved stone. All sand shall be free of clay or other adherent coatings and injurious amount of deleterious matter.
- B. Cement: Standard Portland Cement and high early strength Portland Cement shall meet the requirements of current Federal Specifications SS-C-192 or equal.
- C. Water: Water shall be free from oil, acids, alkali, and vegetable matter and shall be reasonably clean. Sea water shall not be used.
- D. Strength:
  - 1. Concrete shall have 28-day compression strength of 3000psi.
  - 2. Polypropylene fiber shall be used exclusively and must meet the following requirements; the fiber content of the concrete shall be 1.5 pounds per cubic yard of concrete, the fibers shall be polypropylene, collated, accordion type, fibrillated fibers supplied by, or equal to, those supplied by "Fibermesh Co.", 4019 Industry Drive, Chattanooga, Tennessee. Only fibers designed and manufactured from virgin polypropylene (and so certified by the manufacturer) especially for use in concrete shall be accepted.
- E. When welded wire fabric is used, reinforcement material, in conjunction with polypropylene fiber, it shall be WWF 6 x 6 – W 1.4 x W 1.4 (old designation 6 x 6 – 10 x 10)) which complies with ASTM specification A185-1A test.

## **PART 3 - EXECUTION**

### **3.1 CONSTRUCTION METHODS**

- A. Preparation of Subgrade: All boulders, organic material, soft clay, spongy material, and any other objectionable material shall be removed and replaced with approved material. The sub-grade shall be properly shaped rolled and uniformly compacted to conform to the accepted cross sections and grades.
- B. Forms of Concrete: The forms of the concrete shall be of wood or metal, straight free from warps or kinks and of sufficient strength. They shall be staked securely enough to resist the pressure of the concrete without spring. When ready for the concrete to be deposited they will be kept so until the concrete has set. Thickness of driveways where replaced shall be six (6) inches minimum or thicker to match existing.
- C. Placing and Finishing Concrete: Just prior to placing the concrete, the sub-grade shall be moistened. The concrete mixed to the proper consistency shall be placed in the forms and thoroughly tamped in place so as to provide a smooth even finish by means of a wooden float. All faces adjacent to the forms shall be spaded so that after the forms are stripped the surfaces of the faces will be smooth, even and free from honeycomb. All edges shall be tool rounded.
- D. Construction: Concrete replacement shall be against remaining driveway on each side of water main trench to act as a form and provide a construction joint. If intended area to be saw cut and removed is located closer than three (3) feet to an existing joint or edge of roadway, the driveway shall be removed to that joint or the roadway.
- E. Finish: Driveway shall be broomfinished.
- F. Curing Concrete: When completed, the concrete shall be kept moist for a period of not less than three (3) days and longer if necessary and shall be protected from the elements in a satisfactory manner. The Engineer may approve alternate methods.
- G. Backfilling: Backfill shall be suitable selected material and shall be placed and tamped in layers of not over six (6) inches in depth until firm and solid. Backfilling shall follow immediately after the concrete forms have been removed.

### **3.2 BASIS OF PAYMENT**

- A. All concrete work will be included in the Bid.

## SECTION 03020 OPTIONAL BASE COURSE

### Part - 1 Description.

Construct a base course composed of one of the optional materials shown on the typical cross-sections.

### Part - 2 Materials.

Meet the material requirements as specified in the Section covering the particular type of base to be constructed. (FDOT SPECIFICATIONS MANUAL)

Graded Aggregate .....	Section 204
Asphalt .....	Section 234
Limerock .....	Section 911
Shell Base .....	Section 911
Shell-Rock .....	Section 911
Cemented Coquina .....	Section 911

### Part - 3 Selection of Base Option.

The plans will include typical cross-sections indicating the various types of base construction (material and thickness) allowable.

Select one base option as allowed for each typical cross-section shown in the plans. Only one base option is permitted for each typical cross-section.

Notify the Engineer in writing of the base option selected for each typical cross-section at least 45 calendar days prior to beginning placement of base material.

### Part - 4 Construction Requirements.

Construct the base in accordance with the Section covering the particular type of base to be constructed. (FDOT SPECIFICATIONS MANUAL)

Limerock .....	Section 200
Shell Base .....	Section 200
Shell Rock .....	Section 200
Cemented Coquina .....	Section 200
Graded Aggregate .....	Section 204
Asphalt .....	Section 234

### Part - 5 Variation in Earthwork Quantities.

The plans will identify the optional materials used by the County for determining the earthwork quantities (Roadway Excavation, Borrow Excavation, Subsoil Excavation, Subsoil Earthwork, or Embankment). The County will not revise the quantities, for those items having final pay based on plan quantity, to reflect any volumetric change caused by the Contractor's selection of a different optional material.

### Part - 6 Thickness Requirements.

-6.1 Measurements: For non-asphalt bases, meet the requirements of 200-7.3.1.2. For subbases, meet the thickness requirements of 290-4.

The Engineer will determine the thickness of asphalt base courses in accordance with 234-8.1.

-6.2 Correction of Deficient Areas: For non-asphalt bases, correct all areas of the completed base having a deficiency in thickness in excess of 1/2 inch by scarifying and adding additional base material. As an exception, if authorized by the Engineer, such areas may be left in place without correction and with no payment.

For asphalt bases, correct all areas of deficient thickness in accordance with 234-8.

**Part - 7 Calculation of Average Thickness of Base.**

For bases that are not mixed in place, the Engineer will determine the average thickness from the measurements specified in 285-6.1, calculated as follows;

(a) When the measured thickness is more than 1/2 inch greater than the design thickness shown on the typical cross-section in the plans, it will be considered as the design thickness plus 1/2 inch.

(b) Average thickness will be calculated per typical cross-section for the entire job as a unit.

(c) Any areas of base left in place with no payment will not be included in the calculations.

(d) Where it is not possible through borings to distinguish the base materials from the underlying materials, the thickness of the base used in the measurement will be the design thickness.

(e) For Superpave asphalt base course, the average spread rate of each course shall be constructed in compliance with 234-8.

**Part - 8 Method of Measurement.**

The quantity to be paid for will be the plan quantity area in square yards, omitting any areas where under-thickness is in excess of the allowable tolerance as specified in 285-6. The pay area will be the surface area, determined as provided above, adjusted in accordance with the following formula:

$$\text{Pay Area} = \text{Surface Area} \left( \frac{\text{Calculated Average Thickness per 285-7}}{\text{Plan Thickness}} \right)$$

The pay area shall not exceed 105% of the surface area. There will be no adjustment of the pay area on the basis of thickness for base courses constructed utilizing mixed-in-place operations. For Superpave asphalt base course, the quantity to be paid for will be the plan quantity.

**Part - 9 Basis of Payment.**

Price and payment will be full compensation for all work specified in this Section, including tack coat between base layers, prime coat, cover material for prime coat, bituminous material used in bituminous plant mix, and cement used in soil-cement.

Where the plans include a typical cross-section which requires the construction of an asphalt base only, price adjustments for bituminous material provided for in 9-2.1.2 will apply to that typical cross-section. For typical cross-sections which permit the use of asphalt or other materials for construction of an optional base, price adjustments for bituminous material provided for in 9-2.1.2 will not apply.

Payment will be made under:

Item No. 6 Optional Base - per square yard.