

# CITY OF MIAMI SPRINGS

Finance Department  
City of Miami Springs  
201 Westward Drive  
Miami Springs, Florida  
33166-5259  
Phone: 305-805-5035  
Fax: 305-805-5040

## REQUEST FOR PROPOSAL # 07-15/16

### CURTISS MANSION SITE IMPROVEMENTS – BIKE LANE SIDEWALK PROVIDING ACCESS TO THE CURTISS MANSION AS A TRAILHEAD

**For bidding information, contact:**

Tammy Romero  
201 Westward Drive  
Miami Springs, FL 33166-5259  
Telephone: (305) 805-5035  
Facsimile: (305) 805-5040

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*Purchasing Department*  
201 Westward Drive  
Miami Springs, FL 33166-5259  
Phone: (305)805-5035  
Fax: (305)805-5040  
[romerot@miamisprings-fl.gov](mailto:romerot@miamisprings-fl.gov)



*Tammy Romero*  
*Professional Services Supervisor*

## **LEGAL NOTICE**

### **REQUEST FOR PROPOSAL (RFP) #07-15/16**

#### **CURTISS MANSION SITE IMPROVEMENTS - BIKE LANE SIDEWALK PROVIDING ACCESS TO THE CURTISS MANSION AS A TRAILHEAD**

Sealed RFP responses for **CURTISS MANSION SITE IMPROVEMENTS - BIKE LANE SIDEWALK PROVIDING ACCESS TO THE CURTISS MANSION AS A TRAILHEAD**, MIAMI SPRINGS, FL will be received until **2:30 P.M. on Tuesday, June 21st 2016**, via the City Clerk, on the 2<sup>nd</sup> floor, Miami Springs City Hall, 201 Westward Drive, Miami Springs, Florida 33166.

RFP Responses will then be transferred to the Council Chambers. At time, date, and place noted above, responses will be publicly opened. Any responses received after time and date specified will not be considered and returned to the proposer unopened.

A Bid Bond in the amount of Five thousand (\$5,000.00) dollars is required. The successful bidder will be required to furnish Performance and Payment Bonds, each in the amount of one-hundred (100%) percent of the contract amount.

A **Mandatory Pre-Bid Conference** will be held at **9:30 AM on Thursday the 2nd day of June 2016** at Miami Springs, City Hall 2<sup>nd</sup> floor Conference Room, 201 Westward Drive, Miami Springs, Fl. 33166.

**Deadline to request any additional information/clarification will be no later than end of business day on Friday, June 3rd, 2016.**

This Request for Proposal (RFP) is available upon written request at to Tammy Romero at [romerot@miamisprings-fl.gov](mailto:romerot@miamisprings-fl.gov). All requests must be accompanied by name, address, phone and fax number.

The City of Miami Springs reserves the right at any time to modify, waive, or otherwise vary the terms and conditions of this Request for Proposal including, but not limited to, the deadlines for submission, the submission requirements and the Scope of Work. The City further reserves the right to reject any or all submittals, to cancel or withdraw this Request for Proposal at any time. The Proposer, who is otherwise competent, and submits the lowest responsive and responsible Response, shall, subject to the conditions, limitations and restrictions previously set forth herein, be awarded the Request for Proposal, subject to the negotiation of a mutually acceptable Contract with the City.

**City of Miami Springs**

**Section 1**  
**City Legal**  
**Notice**

*Purchasing Department*  
201 Westward Drive  
Miami Springs, FL 33166-5259  
Phone: (305)805-5035  
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**City of Miami Springs**

**Section 2**  
**General**  
**Description &**  
**Supplementary**  
**Conditions**

## GENERAL DESCRIPTION & SUPPLEMENTARY CONDITIONS

The City of Miami Springs is seeking proposals from experienced and qualified companies to provide **Site Improvements to the Curtiss Mansion - Bike Lane Sidewalk Providing Access to the Curtiss Mansion as a Trailhead.**

The scope of this project includes removal of the existing asphalt driveway; and realignment and construction of a new asphalt driveway in a historically accurate location dating to the time when the home was occupied by Mr. Glenn Curtiss. The new asphalt parking lots include signing and pavement markings; a required drainage system consisting of French drain; relocation of existing ADA Compliant parking from the front entrance area to the side of the house; and installation of concrete pedestrian sidewalks to connect to the Curtiss Mansion and to the existing City Bicycle Pathways.

The project also includes landscaping removal, relocation, and installation; and installation of new irrigation systems which are intended to enhance the property and screen the parking lot while still maintaining sight lines of the existing golf course trees and plants. Careful research has been conducted to ensure that the surviving historic landscaping from the time of Glenn Curtiss' occupation is not removed.

1. This project in part will be federally assisted through the State of Florida Department of Transportation funds and as such bidder **must** comply with Executive Order 11246, as amended; by Executive Order 11375; Title VI of the Civil Rights Act of 1964 as amended; the Davis Bacon Act of 1968, as amended; the Copeland Anti-Kickback Act; the Contract Work Hours and Safety Standards Act and all other applicable federal, state and local ordinance.

Note that bidder is required to pay workers on this project the minimum wages as determined in the Wage Determination Decision included in the Bidder's package; and that the contractor **must** ensure that employees are not discriminated because of race, color, religion, sex or national origin.

Additional Requirement: The Miami Dade County Archeologist will monitor at his discretion all subsurface activities and shall be given a 72 hour notice prior to commencement of any excavations. Contractor is required to coordinate excavations with the County Archeologist Jeff Ransom at 305-375-3412.

2. The Request for Proposal along with plans is available by electronic copy and are available upon written request by email to Tammy at [romerot@miamisprings-fl.gov](mailto:romerot@miamisprings-fl.gov).
3. All inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to these specifications should be submitted to:

Tammy Romero  
201 Westward Drive  
Miami Springs, FL 33166-5259  
Telephone: (305) 805-5035  
Facsimile: (305) 805-5040

4. A **Mandatory Pre-Bid Conference** Meeting will be held **June 2nd, 2016 at 9:30 AM at 201 Westward Drive, 2<sup>nd</sup> floor, Council Chambers, Miami Springs, FL. 33166** where any technical questions will be answered.

5. One (1) original and one (1) electronic copy on CD of this entire document as well as any other pertinent documents **must** be returned in order for the bid to be considered for award. Bids **must** be submitted signed in ink, notarized, and submitted in a sealed envelope on which **must** be shown the name of the bidder, bid opening date, and name and bid number of the proposal to:

City Clerk, City Hall  
2nd floor  
201 Westward Drive

6. **Estimated Progress schedule-** indicating starting to completion dates of the stages of work, based on consecutive calendar days. The scheduling **must** also adhere to the City's schedule as follows: NOT to exceed the construction duration deadline of August 31st, 2016 utilizing weekends if necessary, but limited to the hours of 7 A.M. to 7 P.M.
7. Projected Timeline- (Dates are subject to change). Advertisement is in accordance with the minimum of 21 days per FDOT requirements

Advertise Request for Proposal	May 26th, 2016
<b>Mandatory</b> Pre-Bid Meeting	June 2nd, 2016
Clarification deadline	June 3rd, 2016
Amendment (pending complexity)	June 7th, 2016
Bid Opening	June 21st, 2016
Recommendation of Award to City Manager and Council	June 27th, 2016
Pre-Construction Meeting	June 30th, 2016
Contract Start Date	July 5th, 2016
Construction End Date	August 31st, 2016

8. Permits are required (see Contractor Terms and General Conditions) for the project and **must** be applied for at:

Building and Code Compliance, City Hall  
2<sup>nd</sup> floor  
201 Westward Drive  
Miami Springs, Florida 33166

Permits issued by the City of Miami Springs will be at no cost. All other permitting requirements, such as DERM, but not limited to, **must** be applied for and purchased at the respondent's expense.

9. Liquidated Damages apply for this Project. Refer to Section 4c-17 of the RFP package.
10. Respondent **must** furnish evidence of insurance with submittal of this Proposal. Prior to execution of the contract, the City of Miami Springs and FDOT **must** be listed as an "Additional Insured" (see Contractor Terms and General Conditions).

11. All interruptions **must** be put in writing for the City of Miami Springs response.
12. Respondent **must** provide a qualified, professional Project Manager, as well as, personnel to perform the work (see Contractor Terms and General Conditions).
13. A copy of all current licenses **must** be included with the proposal, in addition to, all contractors and subcontractors.
14. All work **must** be performed in accordance with the City of Miami Springs, FDOT, Miami-Dade County and State codes.
15. Bond forms are required and are to be provided by the respondent. Refer to Section 4c-3 of the RFP package.
16. Successful respondent **must** attend two meetings, to be scheduled at a later date: Pre-Construction and Final "Punch list" (see Contractor Terms and General Conditions).
17. No estimated costs for the project will be furnished.
18. The work to be performed under this Contract **must** consist of furnishing all equipment, materials, supplies, and manufactured articles for furnishing all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the Contract in strict accordance with the Contract Documents and plan specifications.
19. Proposals **must** include an introduction, background and objective and assigned Project Manager with contact information.

The successful Respondent will be selected based on the completeness and quality of the proposal submitted to the City of Miami Springs. The City will negotiate a contract with a respondent based on the results of the evaluation and pricing above. The resulting contract shall be subject to review and approval by City Council. The award shall be made to the respondent determined to be the most responsive to the City, taking into consideration the objectives and evaluation criteria set forth in this RFP.

**NOTE:** The Miami Dade County Archaeologist will monitor at his discretion all subsurface activities and shall be given a 72 hour notice prior to commencement of any excavations. Contractor is required to coordinate excavations with the County Archaeologist Jeff Ransom at 305-375-3412.

**For any additional clarification to the items listed above, please refer to the Contractor Terms and General Conditions**

City of Miami Springs  
201 Westward Drive  
Miami Springs, Florida 33166-5259



**REQUEST FOR PROPOSAL # 07-15/16  
Site Improvements to the Curtiss Mansion - Bike Lane  
Sidewalk Providing Access to the Curtiss Mansion as a  
Trailhead**

Bids to be opened in the Council Chambers, 201 Westward Dr., Miami Springs,

Vendor Name:	Federal Identification or Social Security Number:
Vendor Mailing Address:	Payment Terms: Bi-Weekly
	The City of Miami Springs' faster and preferred method of payment is by way of Visa (P-card). Do you accept this form of payment: Yes <input type="checkbox"/> No <input type="checkbox"/>
City - State - Zip Code:	Delivery in Days After Receipt of Purchase Order:
(Area Code) Telephone Number:	(Area Code) Facsimile Number:
E-Mail Address:	Initial appropriate box to acknowledge amendment(s), if necessary.  <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Amendment #1      Amendment #2      Amendment #3
I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign for, and commit, the vendor.	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Authorized Signature (Manual)  <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Authorized Signature (Typed or Printed Title)
STATE OF: _____ COUNTY OF: _____ BEFORE ME, the undersigned authority, this document was acknowledged by _____ who:  <input type="checkbox"/> is personally known to me, or <input type="checkbox"/> produced identification _____ who, after being duly sworn by me, states that he/she has executed this document for the purposes herein expressed.  SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2016.  MY COMMISSION EXPIRES: _____ <div style="text-align: center;">                     _____                      NOTARY PUBLIC, State of Florida                      At Large                       _____                      Printed Name                 </div>	

## STATEMENT OF NO RESPONSE

Some recipients of this solicitation may elect not to respond for a variety of reasons. The City of Miami Springs is very interested in learning whether certain conditions exist with our solicitation process which may discourage responses. Accordingly, if you elect not to respond with an offer to this solicitation, we ask that you indicate the reason below and either fax this form to 305-805-5040 or mail the form to:

City of Miami Springs  
Finance Department  
201 Westward Drive  
Miami Springs, FL 33166-5259

- We do not offer this product/service or an equivalent.
- Our schedule would not permit us to perform
- Insufficient time to respond to solicitation.
- Unable to meet specifications.
- Specifications not clear.
- Unable to meet bond and/or insurance requirements.
- Solicitation addressed incorrectly.
- Specifications "too tight"  
(i.e. geared to specific brand or manufacturer).

If an explanation is appropriate, you may include it below or in an attached letter.

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Due to the large number of companies listed on the City's vendor list and the cost of mailing, it is necessary to delete the names of persons or businesses who fail to respond to three (3) consecutive solicitations without giving a reason or requesting retention on our vendor list.

Do you desire future solicitations?  Yes  No

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

Company: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

# CONTRACTOR'S QUESTIONNAIRE

Company Name: \_\_\_\_\_

Principal Officer: \_\_\_\_\_

Company Address: \_\_\_\_\_

Years in Business under Present Name: \_\_\_\_\_

Primary type of work your firm engages in: \_\_\_\_\_

Years experience in your primary type of work: \_\_\_\_\_

List other types of work your firm engages in:

Does your organization have current occupational license(s) and certificate(s) of competency entitling it to do the work contemplated in this Contract?  Yes  No

**Include copies of licenses and certificates with bid proposal.**

Does your organization currently accept Visa (P-Cards) as form of payment?  Yes  No

Demonstrate your capacity to perform work of this magnitude by indicating five (5) projects that are equal to or greater in scope specifically for any experience/occasion in/of providing like services to municipal or county governments within the past five (5) years.

Company Name:	Contact Name:	
Contract Amount:	Phone #	Fax #
Email:		

Company Name:	Contact Name:	
Contract Amount:	Phone #	Fax #
Email:		

Company Name:	Contact Name:	
---------------	---------------	--

Contract Amount:	Phone #	Fax #
Email:		

Company Name:	Contact Name:	
Contract Amount:	Phone #	Fax #
Email:		

Have you ever failed to complete any work awarded to you? \_\_\_\_\_

If so, where and why? \_\_\_\_\_

Has any officer or partner of your organization ever failed to complete a contract handled in his own name? \_\_\_\_\_

If so, state name of individual, name of owner, and reason thereof:

\_\_\_\_\_

What equipment do you own that is available for the proposed work.

\_\_\_\_\_

What Bank or Banks have you arranged to do business with during the course of the Contract should it be awarded to you? \_\_\_\_\_

List the names, addresses, and phone numbers of all subcontractors which you may utilize to perform this contract. No change in sub-contractors, as listed, will be allowed without the written approval of the City of Miami Springs.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Are you bidding the item specified?  Yes  No

If no, the bidder must also include a sample of the alternate manufacturer's product they intend to supply as the "Or Equal" in addition to complying with the Exceptions to Specifications requirements set forth after in the "General Conditions and Instructions" section of this bid.

## SPECIAL CONDITIONS

**TERM OF CONTRACT** Construction start date shall be July 5th, 2016 however, is based on "Notice to Proceed" and construction end date is August 31st, 2016.

**TERMINATION OF CONTRACT** The City of Miami Springs reserves the right to terminate this contract if the successful bidder fails to perform satisfactorily in all areas of service, availability, delivery, quality and any other area covered by these specifications. In the event of such cancellation, the City additionally reserves the right to make the award for the balance of the contract period to the next higher bidder.

**EVALUATION OF BIDS** Bid evaluation will be based on:

- Cost of services to the City of Miami Springs.
- Experience of bidder.
- Qualifications.

**FAILURE TO COMPLY** Any failure on the part of a responder to provide the documentation set forth in the bid specifications could, in and of itself, constitute a determination that the proposal is non-responsive and therefore disqualified.

### **BIDDERS STANDARD CHECKLIST:**

Did you remember to include/complete the following?

- \_\_\_\_\_ 1 Original and 1 electronic copy of bid submittal
- \_\_\_\_\_ Copy of current licenses
- \_\_\_\_\_ Proof of current insurances
- \_\_\_\_\_ Bid Bond
- \_\_\_\_\_ Sign for Amendment receipts

Although the foregoing is intended to provide a complete list of all bid requirements and submittals, the City's failure to include any bid requirements or submittals therein, shall not constitute a waiver of any Bid/RFP requirements for any proposer.

**Section 3**  
**City Contract**  
**Terms and**  
**General**  
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**Contractor Terms & General Conditions**

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## **1. DEFINITIONS**

### ***1.1. Addenda or Amendment***

Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

### ***1.2. Agreement***

The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

### ***1.3. Application for Payment***

The form accepted by PROJECT MANAGER which is to be used by CONTRACTOR in requesting progress payments and which is to include such supporting documentation as is required by the Contract Documents and determined by the Owner to be required to determine value of actual work in place.

### ***1.4. Bid***

The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

### ***1.5. Bidding Documents***

The Advertisement, Invitation to Bid, Instructions to Bidders and Supplemental Conditions, Bid Proposal Form and the proposed Contract Documents, including but not limited to: Addenda issued prior to receipt of Bids.

### ***1.6. Bonds***

Bid, performance and payment bonds and other instruments of security.

### ***1.7. Change Order***

A document (see Change Order Form) which is signed by CONTRACTOR and OWNER and directs or authorizes an addition or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

### **1.8. Documents**

The Bidding Documents, Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to section 4.5 and section 4.6 on or after the Effective Date of the Agreement.

### **1.9. Contract Price**

The moneys payable by OWNER to CONTRACTOR under the Contract Services as stated in the Agreements.

### **1.10. Contract Duration**

The number of days (computed as provided in section 16.2) or the date stated in the Agreement for the completion of the Work. Contract time will be based on calendar days.

### **1.11. CONTRACTOR**

The person, firm or corporation with whom OWNER has entered into the Agreement.

### **1.12. Defective**

An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to PROJECT MANAGER'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with section 14.9 or section 14.11. The Construction Manager should have authority to reject work that does not conform to the contract documents. In any such event Contractor shall have forty-eight (48) hours to take appropriate steps to correct such work to the satisfaction of the Construction Manager and Owner.

**1.13. Drawings**

The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Architect and are referred to in the Contract Documents.

**1.14. Effective Date of the Agreement**

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

**1.15. Field Order**

A written order issued by PROJECT MANAGER which orders minor changes in the Work in accordance with section 9.5 but which does not involve a change in the Contract Price or Contract Time.

**1.16. Laws and/or Regulations**

Laws, rules, regulations, ordinances, codes and/or orders.

**1.17. Notice of Award**

The written notice to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

**1.18. Notice to Proceed**

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

**1.19. OWNER**

The City of Miami Springs, 201 Westward Drive, Miami Springs, Florida 33166-5259.

**1.20. Partial Utilization**

Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

**1.21. Project**

The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

**1.22. PROJECT MANAGER**

Roy Rodriguez and JoEllen Phillips of Curtiss Mansion, Inc. or as otherwise designated by Owner.

**1.23. Project Manual**

The title of the bound documentary information prepared for a construction project and includes bidding requirements, conditions of contract and product specifications.

**1.24. Resident Project Representative**

The authorized representative or PROJECT MANAGER or OWNER who is assigned to the site or any part thereof.

**1.25. Shop Drawings**

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

**1.26. Specifications**

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

**1.27. Subcontractor**

An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work.

**1.28. Substantial Completion**

The point at which, in the opinion of PROJECT MANAGER as evidenced by PROJECT MANAGER'S definitive certificate of Substantial Completion, the Work (or a specified part

thereof) is sufficiently complete, in accordance with the Contract Documents, that it can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with section 14.14. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

**1.29. Supplementary Conditions**

The part of the Contract Documents which amends or supplements these General Conditions.

**1.30. Supplier**

A manufacturer, fabricator, supplier, distributor, material-man or vendor.

**1.31. Underground Facilities**

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

**1.32. Unit Price Work**

Work to be paid for on the basis of unit prices.

**1.33. Work**

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the act of and result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

**1.34. Work Directive Change**

A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in section 10 e, or to emergencies under section 6.16. A Work Directive Change may

not change the Contract Price or Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in section 10.

**1.35. Written Amendment**

A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

**2. INSTRUCTIONS AND GENERAL CONDITIONS**

**2.1. Additional Information**

Each bidder shall examine all parts of the Invitation to Bid documents and shall judge all matters relating to the adequacy and accuracy of such documents. The City of Miami Springs shall not be responsible for oral interpretations given by any city employee, representative, or others. No plea of ignorance, by the bidder, of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City of Miami Springs or the compensation to the bidder. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to these specifications should be submitted in writing to:

Tammy Romero  
201 Westward Drive  
Miami Springs, FL 33166-5259  
Telephone: (305) 805-5035  
Facsimile: (305) 805-5040

**2.2. Addenda**

The bid title and number should be referenced on all correspondence. Should any questions or responses require

revisions to the specifications as originally published, such revisions will be by formal amendment only.

The issuance of a written amendment is the only official method whereby interpretation, clarification or addition information will be given. If any amendments are issued to this Invitation to Bid, the City will attempt to notify all prospective bidders who have secured same; however, it shall be the responsibility of each bidder, prior to submitting their bid, to contact the City of Miami Springs to determine if an amendment was issued and make such amendment a part of their bid.

### ***2.3. Assignment***

The successful bidder(s) shall not assign, transfer, convey, sublet or otherwise dispose of this contract, or of any or all of its right, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the City.

### ***2.4. Bidder Certification***

Submission of a signed proposal is bidder's certification that the bidder will accept any awards made to him as a result of said submission at the prices and terms contained therein.

### ***2.5. Bid Submission***

Bids shall be submitted to the City Clerk's Office properly signed in ink and submitted in a sealed envelope on which shall be shown the name of the bidder, bid opening date, and name and bid number of the proposal.

### ***2.6. Bidder's Certification***

By submitting a bid proposal, the bidder declares that he understands and agrees that this bid proposal, specifications, provisions, terms and conditions of same, shall become an integral valid part of the contract between the City of Miami Springs and the Contractor upon notice of award of contract in writing and/or issuance of a contract by the City of Miami Springs.

### **2.7. Bid Tabulations**

Bidders desiring a copy of the bid tabulation may request same by enclosing a self-addressed stamped envelope with their bid.

### **2.8. Bid Withdrawal**

No proposal can be withdrawn after it is filed unless the bidder makes his request in writing to the City prior to the time set for the opening of bids, or unless the City fails to accept it within ninety (90) days after the date fixed for opening bids.

### **2.9. Bidder Responsibility**

Before submitting the proposal, each bidder shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract, and to verify any representations made by the City that the bidder will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful bidder from his obligation to comply in every detail with all provisions and requirements of the contract documents.

### **2.10. Conflict of Interest and Disclosure**

The award hereunder is subject to the provisions of Chapters 24 and 112, Florida Statutes. If any officer, director, employee or agent of Respondent is also an officer or an employee of Miami Springs. Respondent must so state in its proposal. All Respondents must disclose the name of any state officer or employee who owns, directly or indirectly, an interest of five percent (5%) or more in Respondent's firm or any of its branches or affiliates. All Respondents must also disclose the name of any employee, agent, lobbyist, previous employee of the City, or other person, who has received or will receive compensation of any kind, or who has or is required to register under Section 112.3215, Florida statutes, in seeking to influence the actions of the City in connection with this procurement.

**2.11. Expenses Incurred in Preparing Proposal**

The City accepts no responsibility for any expenses incurred in the proposal's preparation, and presentation; such expenses are to be borne exclusively by the bidder.

**2.12. Late Bid Rejection**

The City of Miami Springs is not responsible for the delivery of any bid proposal. All bid proposals received by the Purchasing Agent after the time stated in the Invitation to Bid, shall be returned unopened and will not be considered for award.

**2.13. Licenses and Registrations**

The contractor shall be responsible for obtaining and maintaining any licenses required pursuant to the laws of Dade County, the City of Miami Springs, or the State of Florida. Every vendor submitting a bid on this invitation to bid must include a copy of the company's occupational license or a written statement on letterhead indicating the reason no license exists. Miami Springs, Florida-based businesses are required to purchase an Occupational License to conduct business within the City. Vendors residing or based in another state or municipality, but maintaining a physical business facility or representative in Miami Springs, may also be required to obtain such a license by their own local government entity or by Miami Springs. For information specific to Miami Springs occupational licenses call (305) 805-5030. If the contractor is operating under a fictitious name as defined in Section 865.09, Florida Statutes, proof of current registration with the Florida Secretary of State shall be submitted with the bid.

**2.14. No Bid**

If not submitting a bid, respond by returning the "Statement of No Response" form, marking the appropriate box, and explain the reason. Repeated failure to quote without sufficient justification shall be cause for removal of the bidder's name from the bid mailing list. To qualify as a respondent, bidder must submit a reply no later than the stated bid opening date and hour.

**2.15. Qualification of Bidders**

Each bidder may be required, before the award of any contract, to show to the complete satisfaction of the City

of Miami Springs that he has the necessary facilities, ability, and financial resources, to furnish the service as specified herein in a satisfactory manner, and he may also be required to show past history and reference which will enable the City to satisfy itself as to the bidder's qualifications. Failure to qualify according to the foregoing requirements may justify the City in rejecting his bid.

### **3. PRELIMINARY MATTERS**

#### ***3.1. Delivery of Bonds***

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with section 5.

#### ***3.2. Delivery of Insurance Certificates***

Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to PROJECT MANAGER, certificates showing the existence of insurance (and other evidence of insurance required by OWNER and/or the Contract Documents) which CONTRACTOR is required to purchase and maintain in accordance with section 5.6.

#### ***3.3. Commencement of Contract Time; Notice to Proceed***

The Contract Time shall commence to run on the date indicated in the Notice to Proceed. In no event will the starting date included in the Notice to Proceed be later than thirty (30) calendar days after the Effective Date of the Agreement.

#### ***3.4. Starting the Project***

CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no work shall be done at the site prior to the date on which the Contract Time commences to run.

#### ***3.5. Before Starting Construction***

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to PROJECT MANAGER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain

a written interpretation or clarification from PROJECT MANAGER before proceeding with any Work affected thereby.

### **3.6. Submittals**

Within ten (10) days after the Effective Date of the Agreement (unless otherwise specified in the detailed specifications), CONTRACTOR shall submit to PROJECT MANAGER for review:

- a) an estimated progress schedule, using the Critical Path Method (PERT), indicating the starting and completion dates of the various stages of the Work;
- b) a preliminary schedule of Shop Drawing submissions; and
- c) a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

### **3.7. Pre-construction Conference**

Before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, PROJECT MANAGER and FDOT as appropriate will be held to discuss the schedules referred to in section 3.5, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

### **3.8. Finalizing Schedules**

At least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, PROJECT MANAGER and others as appropriate will be held to finalize the schedules submitted in accordance with section 3.5. The finalized progress schedule will be acceptable to PROJECT MANAGER as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on PROJECT

MANAGER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be acceptable to PROJECT MANAGER as providing a workable arrangement for processing the submission. The finalized schedule of values will be acceptable to PROJECT MANAGER as to form and substance.

#### **4. CONTRACT DOCUMENTS, INTENT, AMENDING, REUSE**

##### ***4.1. Intent***

The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonable be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for.

##### ***4.2. Terminology***

When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization, or association, or the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or PROJECT MANAGER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to PROJECT MANAGER, or any of PROJECT MANAGER'S consultants, agents or employees, any

duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provision of section 9.9. Clarifications and interpretations of the Contract Documents shall be issued by PROJECT MANAGER as provided in section 9.4. The Agreement shall take precedence over all Contract Documents.

#### **4.3. Precedence of Documents**

The various Contract Documents shall be given precedence, in case of conflicts, error or discrepancy as follows: Agreement Modifications, Agreement, Technical Specifications, Supplementary Conditions, General Conditions, Drawings. In the event of inconsistencies in the same order of precedence, the more expensive and/or stringent will be required. Full size details shall take precedence over scale drawings and large scale drawings shall take precedence over small scale drawings. Dimensions given in figures shall take precedence over scaled dimensions. Actual job dimensions shall take precedence over scale and figure dimensions on the drawings.

#### **4.4. Errors in Contract Documents**

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to PROJECT MANAGER in writing at once and, before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from PROJECT MANAGER.

#### **4.5. Amending and Supplementing Contract Documents**

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

- a) a Written Amendment;
- b) a Change Order (pursuant to section 10);
- c) a Work Directive Change (pursuant to section 10)

#### **4.6. Limitations**

As indicated in section 11.2 and section 12, Contract Price and Contract Time may only be changed by a Change order or a Written Amendment.

#### **4.7. Minor variations**

In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Works may be authorized, in one or more of the following ways:

- a) a Field Order (pursuant to section 9.5);
- b) PROJECT MANAGER's approval of a Shop Drawing or sample (pursuant to section 6.17);
- c) PROJECT MANAGER's written interpretation or clarification (pursuant to section 9.4).

#### **4.8. Reuse of Documents**

Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall 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 Architect; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and PROJECT MANAGER and specific written verification or adaptation by Architect.

### **5. BONDS AND INSURANCE REQUIREMENTS (ALSO REFER TO SECTION 4c-3 BONDING OF THE RFP DOCUMENT)**

#### **5.1. Bid Bond**

- a) All bids submitted to the City shall be accompanied by a bid bond in the amount of ten percent (10%) of total bid amount. The failure to submit the required bond with the actual bid shall constitute sufficient cause to invalidate the bid.
- b) Bid bonds submitted by all unsuccessful bidders shall be returned within twenty (20) days of the bid award. If the successful bidder fails to execute an

appropriate contract with the City and provide all further bonds, insurance certificates and other required documentation within ten (10) days from the bid award (or from the receipt of the city contract, whichever is greater), the City shall have just cause to annul the bid award and forfeit the successful bidder's bid bond to the City.

- c) The forfeiture of any bid bond shall not constitute a penalty, but shall serve to compensate the City for the damages it sustained in having to annul the bid award. While it is acknowledged that the City's damages in this regard are substantial, irreparable, and difficult to ascertain, the forfeited bid bond shall constitute the full liquidated damages due the City.
- d) If a bid award is annulled and the bid bond forfeited, the City may then, in its sole and exclusive discretion, award the bid to the next lowest responsible bidder or reject all other bids.
- e) Any successful bidder shall receive the return of its bid bond within twenty (20) days following its execution of an appropriate contract with the City and its submission of all further bonds, insurance certificates and other documentation required by the City's bid specifications.

#### **5.2. Performance Bond**

- a) The successful bidder shall be required to provide the City with an acceptable performance bond in the amount of 100% of the estimated contract amount. This bond shall be submitted to the City at the same time that the successful bidder executes its contract with the City.
- b) It is specifically understood and agreed that the performance bond shall constitute an absolute guarantee to the City that the successful bidder will satisfactorily complete all work and services required by its contract with the City. This bond shall remain in full force and effect during the entire contract period with the City and at least until one year after the date when final payment becomes due. If the bond

is written on an annual coverage basis, it must be renewed no later than thirty (30) days prior to its annual termination date.

- c) The successful bidder's failure to submit the required performance bond by the time it executes its contract with the City shall constitute sufficient cause to annul the bid award.

### **5.3. Payment Bond**

- a) The successful bidder shall be required to provide the City with an acceptable payment bond as described in Florida Statute §255.05. This bond shall be submitted to the City at the same time that the successful bidder executes its contract with the City.
- b) It is specifically understood and agreed that the payment bond shall constitute an absolute guaranty that the successful bidder will properly and promptly pay all claimant and all other parties, as specified in Florida Statute §255.05, and otherwise fully comply with the provisions contained within Florida Statute §255.05.
- c) The successful bidder's failure to submit the required payment bond by the time it executes its contract with the City shall constitute sufficient cause to annul the bid award.

### **5.4. Form of Bonds**

The City specifically reserves the right to approve, in its sole and exclusive discretion, the form and content of all required bonds. All bonds shall have as the surety thereon only such surety company as is acceptable to the City, in its sole and exclusive discretion, and which is authorized to write bonds of such character and amount under the laws of the State of Florida. A surety company must, at least, have a Best's Key Rating Guide General Policyholder's Rate of "A" or better and a Financial Category of Class "V" or better to be acceptable to the City. The attorney-in-fact or other officer who signs a bond must file with such bond a certified copy of his Power-of-Attorney authorizing him to do so.

### **5.5. Alternative Security**

The City specifically reserves the right to approve, in its sole and exclusive discretion, alternative forms of security such as Bank Drafts, Money Orders, Irrevocable Letters of Credit, Cash Bonds, and Direct Cash Deposits when such alternatives are in the best interests of the City of Miami Springs. **PERSONAL OR COMPANY CHECKS ARE NOT ACCEPTABLE FORMS OF BID SECURITY.**

### **5.6. Insurance**

- a) Prior to execution of the Contract by the City and commencement of work, the Contractor must obtain all insurance required under this paragraph and submit same to the City for approval. All insurance shall be maintained until work has been completed and accepted by the City.
- b) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form where a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- c) Automobile Liability Insurance - covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 per occurrence for Bodily Injury and Property Damage combined.
- d) Worker's Compensation Insurance - as required by Chapter 440, Florida Statutes.
- e) All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength. The company must be rated no less than "B" as to management and no less than Class "V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company,

Oldwick, New Jersey, or its equivalent, subject to the approval of the Finance Director.

- f) Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of the work. These policies described above, and any certificates shall specifically name the City of Miami Springs as an additional Insured and shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior to written notice has been given to the City of Miami Springs.
- g) Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- h) Cancellation clauses for each policy should read as follows: Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the Certificate Holder named herein.

## **6. CONTRACTOR'S RESPONSIBILITIES**

The Contractor agrees that it will abide by the requirements of the of the Federal Labor Standards Provisions as described in Form HUD 4010 issued by the U.S. Department of Housing and Urban Development and those requirements contained in General Wage Decision Number FL160221 01/08/2016 FL221 for the entire project duration.

### **6.1. Supervision**

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

### **6.2. Superintendence**

CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent acceptable to the Project Manager and Owner, who shall not be replaced without written notice to OWNER and PROJECT MANAGER except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

### **6.3. Labor, Materials and Equipment**

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. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to PROJECT MANAGER.

### **6.4. Responsibility of Materials and Equipment**

Unless otherwise specified in the detailed specifications, CONTRACTOR shall furnish and assume full responsibility for all 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 furnishing, performance, testing, start-up and completion of the Work.

### **6.5. Quality of Materials and Equipment**

All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by PROJECT MANAGER, CONTRACTOR shall furnish satisfactory evidence (including reports of required test) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the

applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to PROJECT MANAGER, or any of PROJECT Manager's consultant, agents or employees, any duty of authority to undertake responsibility contrary to the provisions of section 9.9.

#### **6.6. Adjusting Progress Schedule**

CONTRACTOR shall submit to PROJECT MANAGER for acceptance, to the extent indicated in section 3.8, adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provision of the detailed specifications applicable thereto.

#### **6.7. Substitutes or "Or-Equal" Items**

- a) Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by PROJECT MANAGER if sufficient information is submitted by CONTRACTOR to allow PROJECT MANAGER to determine that the material or equipment proposed is equivalent or equal to that named.

Notwithstanding the foregoing, the City reserves the right to prohibit, in advance, any consideration of "or equal" submittals prior to the dissemination of any bid/RFP specifications.

Bidders **MUST** submit any cost-saving/value-added alternate bid pricing suggestions, such as rebates, creative lease agreements, extended warranty periods, trade-in allowances, or the availability of discounts for floor model or demonstrator units at significant savings. Any alternate pricing should be noted as a separate line that may be subtracted from the bid pricing as specified, allowing for clear evaluation and value-analysis by the City.

- b) The procedure for review by PROJECT MANAGER will include the following as supplemented in the detailed specifications. Requests for review of substitute items of material and equipment will not be accepted by PROJECT MANAGER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to PROJECT MANAGER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute or use 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 work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by PROJECT MANAGER in evaluating the proposed substitute. PROJECT MANAGER may require CONTRACTOR to furnish at Contractor's expense samples and/or additional data about the proposed substitute.
- c) If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to PROJECT MANAGER, if CONTRACTOR submits sufficient information to allow PROJECT MANAGER to determine that

the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by PROJECT MANAGER will be similar to that provided in section 6.7 as applied by PROJECT MANAGER and as may be supplemented in the detailed specifications.

- d) PROJECT MANAGER will be allowed a reasonable time within which to evaluate each proposed substitute. PROJECT MANAGER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without PROJECT Manager's prior written acceptance which will be evidenced by either a Chance Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish, at Contractor's expense, a special performance guarantee or other surety with respect to any substitute. PROJECT MANAGER will record time required by PROJECT MANAGER and PROJECT Manager's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not PROJECT MANAGER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for charges of PROJECT MANAGER and PROJECT Manager's consultants for evaluating each proposed substitute.

**6.8. Concerning Subcontractors, Suppliers and Others**

- a) CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and PROJECT MANAGER as indicated in section 6.8), whether initially or as a substitute, against whom OWNER or PROJECT MANAGER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.
- b) If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for

acceptance by OWNER and PROJECT MANAGER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, Owner's or PROJECT Manager's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked at any time on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, No acceptance by OWNER or PROJECT MANAGER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or PROJECT MANAGER.

- c) CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or PROJECT MANAGER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or PROJECT MANAGER to pay or to see to the payment of any money's due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- d) 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.
- e) All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and PROJECT MANAGER. CONTRACTOR shall pay each Subcontractor a just share of any insurance

moneys received by CONTRACTOR on account of losses under policies issued pursuant to section 5.6.

#### **6.9. Patent Fees and Royalties**

~~CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. 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 PROJECT MANAGER 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. CONTRACTOR shall indemnify and hold harmless OWNER and PROJECT MANAGER and anyone directly or indirectly employed by either of them from and against any claims, damages, losses, and expenses (including attorneys' fees and court costs) arising out of 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, and shall defend all such claims in connection with any alleged infringement of such rights.~~

#### **6.10. Permits**

Unless otherwise provided in the Supplementary Conditions, 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 opening of Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees. Applicable City of Miami Springs Building permits will be issued without charge covering contract work with the City.

#### **6.11. Laws and Regulations**

- a) CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor PROJECT MANAGER shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
  
- b) If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give PROJECT MANAGER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in section 4.5. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to PROJECT MANAGER, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

**6.12.Taxes**

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. The City of Miami Springs is exempt from Federal Excise and State of Florida Sales Tax. State Sales Tax and Use Tax Certificate Number is 85-8012621640C-5.

**6.13.Use of Premises**

- a) CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Storage of all equipment, material, and /or stock, etc. shall be maintained within that certain fenced in area of the project site. CONTRACTOR shall assume full responsibility for any damage to any such

land or area or to the owner or occupant thereof on of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or PROJECT MANAGER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and PROJECT MANAGER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or PROJECT MANAGER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

- b) During the progress of the Work, CONTRACTOR shall keep the premises free from accumulation of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish, and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.
- c) 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 property to stresses or pressures that will endanger it.

#### **6.14. Record Documents**

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawing, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to section 9.4) in good order and annotated to show all changes made during construction.

These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to PROJECT MANAGER for reference. Upon completion of the Work, these record documents, samples, Shop Drawings and written warranties/guarantees from all manufacturers, suppliers, and subcontractors will be delivered to PROJECT MANAGER for OWNER. Final acceptance of the project will be withheld until delivery of the documents is made to the PROJECT MANAGER.

#### ***6.15.Safety and Protection***

- a) CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- b) all employees on the Work and other persons and organizations who may be affected thereby;
- c) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- d) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.
- e) CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss including that the products supplied to the OWNER conform, in all respects, to the standards set forth in the Occupational Safety and Health Act of 1970, as amended; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when

prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in section 6.15 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and PROJECT MANAGER has issued a notice to OWNER and CONTRACTOR in accordance with section 14.14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- f) CONTRACTOR shall designate in writing a responsible representative at the site whose duty shall be the prevention of accidents. This person may be CONTRACTOR's superintendent or otherwise designated individual acceptable to OWNER and Project Manager.

#### **6.16. Emergencies**

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from PROJECT MANAGER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give PROJECT MANAGER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If PROJECT MANAGER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

#### **6.17. Shop Drawings and Samples**

- a) After checking and verifying all field measurements and after complying with applicable procedures specified in the detailed specifications, CONTRACTOR

shall submit to PROJECT MANAGER for review and approval in accordance with the accepted schedule of Shop Drawings submissions (see section 3.8), or for other appropriate action if so indicated in the Supplementary Conditions, eight copies (unless otherwise specified in the detailed specifications) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. Shop Drawings submitted without this stamp or specific written indication will be returned without action. All submissions will be identified as PROJECT MANAGER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable PROJECT MANAGER to review the information as required.

- b) CONTRACTOR shall also submit to PROJECT MANAGER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by a accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- c) Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- d) At the time of each submission, CONTRACTOR shall give PROJECT MANAGER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be

made on each Shop Drawing submitted to PROJECT MANAGER for review and approval of each such variation.

- e) PROJECT MANAGER will review and approve with reasonable promptness Shop Drawings and samples, but PROJECT MANAGER's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by PROJECT MANAGER, 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 PROJECT MANAGER on previous submittals. Shop Drawings and submittal data will be reviewed two times, thereafter all further review time will be charged to the CONTRACTOR.
- f) PROJECT MANAGER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called PROJECT MANAGER's attention to each such variation at the time of submission as required by section 6.17 and PROJECT MANAGER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by PROJECT MANAGER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of section 6.17.
- g) Where a Shop Drawing or sample is required by Specifications, any related Work performed prior to PROJECT MANAGER's review and approval of the pertinent

submission will be the sole expense and responsibility of CONTRACTOR.

**6.18. Continuing the Work**

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, except as permitted by section 15.3 or as CONTRACTOR and OWNER may otherwise agree in writing.

**6.19. Indemnification**

To the fullest extent permitted by law, rule, regulation or other applicable governmental provisions, CONTRACTOR ("\_\_\_\_\_") shall indemnify, defend and hold

Contractor Name

harmless OWNER and PROJECT MANAGER, their representatives, officers, officials, and employees ("Indemnitees"), from and against all claims, damages, losses, liens, causes of action, suits, judgments, costs or expenses, including but not limited to reasonable attorney's fees ("Claims"), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

**7. OTHER WORK**

**7.1. Related Work at Site**

- a) OWNER may perform other work related to the Project at the site with OWNER's own forces, have other work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work.
- b) CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work

with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of PROJECT MANAGER and others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

- c) If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to PROJECT MANAGER in writing any delay, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

### **7.2. Coordination**

If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be the successful Bidders superintendent, and the specific matters to be covered by such authority and responsibility will be as itemized, and the extent of such authority and responsibilities will be as if Contractor were contracted for said other work. Unless otherwise provided in the Supplementary Conditions, neither OWNER nor PROJECT MANAGER

shall have any authority or responsibility in respect of such coordination.

## **8. OWNER'S RESPONSIBILITIES**

### ***8.1. Communications***

OWNER shall issue all communications to CONTRACTOR through PROJECT MANAGER and Contractor shall issue all communications to Owner through Project Manager.

### ***8.2. Promptness***

OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in section 14.

### ***8.3. Change orders***

OWNER is obligated to execute Change Orders as indicated in section 10.

### ***8.4. Inspections, tests and approvals***

OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in section 13.4.

### ***8.5. Work stoppage***

In connection with OWNER's right to stop Work or suspend Work, see section 13.10 and section 15.1. Section 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

## **9. PROJECT MANAGER'S STATUS DURING CONSTRUCTION**

### ***9.1. OWNER's Representative***

PROJECT MANAGER will be OWNER's representative during the construction period. The duties and responsibilities and the limitation of authority of PROJECT MANAGER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROJECT MANAGER.

### ***9.2. Visits to Site***

PROJECT MANAGER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in

substantial accordance with the Contract Documents. PROJECT MANAGER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. PROJECT MANAGER's efforts will be directed toward providing for OWNER a greater degree of confidence that the Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified Construction Manager, PROJECT MANAGER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

### ***9.3. Project Representation***

If OWNER and PROJECT MANAGER agree, PROJECT MANAGER will furnish a Resident Project Representative to assist PROJECT MANAGER in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided herein.

### ***9.4. Clarifications and Interpretations***

PROJECT MANAGER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise as PROJECT MANAGER may determine necessary, which shall be consistent with or reasonable inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in section 11 and section 12.

### ***9.5. Authorized Variations in Work***

PROJECT MANAGER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER, and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the

Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in section 11 and section 12.

#### ***9.6. Rejecting Defective Work***

PROJECT MANAGER will have authority to disapprove or reject Work which PROJECT MANAGER believes to be defective (see section 13.14) and will also have authority to require special inspection or testing of the Work as provided in section 13.9, whether or not the Work is fabricated, installed or completed. PROJECT MANAGER shall notify the CONTRACTOR in writing of any disapproval and/or rejection.

#### ***9.7. Shop Drawings, Change Orders and Payments***

- a) In connection with PROJECT MANAGER's responsibility for Shop Drawings and samples, see section 6.17.
- b) In connection with PROJECT MANAGER's responsibilities as to Change Orders, see section 8, section 11, and section 12.
- c) Connection with PROJECT MANAGER's responsibilities in respect of Applications for Payment, etc., see section 14.

#### ***9.8. Decisions on Disputes***

- a) PROJECT MANAGER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the contract documents pertaining to the performance and furnishing of the Work and claims under section 11 and section 12 in respect of changes in the Contract price or Contract Time will be referred initially to PROJECT MANAGER in writing with a request for a formal decision in accordance with this paragraph, which PROJECT MANAGER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to PROJECT MANAGER and the other party to the Agreement promptly (but in no event

later than twenty (20) days) after the occupancy unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim.

- b) When functioning as interpreter and judge under section 9.8, PROJECT MANAGER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by PROJECT MANAGER pursuant to section 9.8 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in section 14.17) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

#### **9.9. Limitations on PROJECT MANAGER's Responsibilities**

- a) PROJECT MANAGER's authority to act under this section 9 or elsewhere in the Contract Documents nor any decision made by PROJECT MANAGER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of PROJECT MANAGER to CONTRACTOR, any Subcontractor, any Supplier, or any person or organization performing any of the Work, or to any surety for any of them.
- b) Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of PROJECT MANAGER as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to PROJECT MANAGER any duty or authority to supervise or

direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of section 9.9.

- c) PROJECT MANAGER will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and PROJECT MANAGER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.
- d) PROJECT MANAGER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

## **10. CHANGES IN THE WORK**

- a) Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract documents (except as otherwise specifically provided).
- b) If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in section 11 and section 12.
- c) CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in sections 4.5, 4.6, and 4.7, except in the case of an emergency as provided in section 6.16.

- d) OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:
- e) change in the Work which are ordered by OWNER pursuant to section 10, are required because of acceptance of defective Work under section 13.13 or correcting defective Work under section 13.14, or are agreed to by the parties;
- f) changes in the Contract Price or Contract Time which are agreed to by the parties; and
- g) changes in the Contract Price or contract Time which embody the substance of any written decision rendered by PROJECT MANAGER pursuant to section 9.8.
- h) In lieu of executing any such Change Order (or written Amendment), an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in section 6.18.
- i) If notice 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 Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## **11. CHANGES OF THE CONTRACT PRICE**

### ***11.1.The Contract Price***

Constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

### ***11.2.The Contract Price may only be changed***

by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to PROJECT MANAGER promptly (but in no event later than thirty (30) days) after the

occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after such occurrence (unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the contract Price shall be determined by PROJECT MANAGER in accordance with section 9.8 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph.

***11.3.The value of any Work covered by a Change Order***

or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit price to the quantities of the items involved (subject to the provisions of section 1.32).
- b) By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with section 11.6).
- c) On the basis of the Cost of the Work (determined as provided in section 11.4 and section 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in section 11.6).

***11.4.Cost of the Work***

- a) The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in section 11.5;

- b) 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. 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' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by OWNER.
- c) 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 all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
- d) Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of PROJECT MANAGER, which bids will be accepted. If a 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 shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

- e) Cost of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
- f) Supplemental costs including the following:
  - 1) The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.
  - 2) 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.
  - 3) 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 PROJECT MANAGER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance 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. Rental of Contractor's or other's equipment at the site shall be for hours used only.
  - 4) Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
  - 5) 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.
  - 6) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with

the performance and furnishing of the Work provided they 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. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in section 11.6.

- 7) The cost of utilities, fuel and sanitary facilities at the site.
- 8) Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- 9) Cost of premiums for additional bonds and insurance required because of changes in the Work.

**11.5. Cost of the Work not Included**

The term cost of the Work shall not include any of the following:

- a) Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (partnership and sole proprietorships), general managers, engineer, architects, estimators, attorney, 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 a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in section 11.4 which are to be considered administrative costs covered by the CONTRACTOR's Fee.
- b) Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

- c) Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- d) Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by section 11.4).
- e) 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.
- f) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in section 11.4.

#### **11.6. CONTRACTOR's Fee**

The Contractor's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

- a) a mutually acceptable fixed fee; or if none can be agreed upon,
- b) a fee based on the following percentages of the various portions of the Cost of Work;
- c) for costs incurred under section 11.4c)), the CONTRACTOR's Fee shall be fifteen percent (15%).
- d) for cost incurred under section 11.4d), the CONTRACTOR's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

- e) no fee shall be payable on the basis of costs itemized under section 11.4e) and section 11.4f) and section 11.5;
- f) the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent (10%) of the net decrease; and
- g) 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 section 11.6.

## **12. CHANGE OF CONTRACT TIME**

- a) The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to PROJECT MANAGER promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty (60) days after such occurrence (unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by PROJECT MANAGER in accordance with section 9.8 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph.
- b) The Contract Time may be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in section 12. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as

contemplated by section 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

- c) All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this section 12 shall exclude recovery for damages for delay by Contractor.

### **13. WARRANTY AND GUARANTEE**

#### ***13.1.Warranty and Guarantee***

CONTRACTOR warrants and guarantees to OWNER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this section 13.

#### ***13.2.Access to Work***

PROJECT MANAGER and PROJECT MANAGER's representative, other representatives of OWNER, testing agencies and government agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

#### ***13.3.Tests and Inspections***

CONTRACTOR shall give PROJECT MANAGER timely written notice of readiness of the Work for all required inspections, test or approvals.

#### ***13.4.Contractors' responsibilities***

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish PROJECT MANAGER the required certificates of inspection testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or PROJECT MANAGER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all

inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by OWNER (unless otherwise specified).

***13.5.All inspections, tests or approvals***

Other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by PROJECT MANAGER if so specified).

***13.6.Covered Work***

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of PROJECT MANAGER, it must, if requested by PROJECT MANAGER, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given PROJECT MANAGER timely notice of CONTRACTOR's intention to cover the same and PROJECT MANAGER has not acted with reasonable promptness in response to such notice.

***13.7.Contractor's Obligations***

Neither observations by PROJECT MANAGER nor inspections, test or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

***13.8.Uncovering Work***

If any Work is covered contrary to the written request of PROJECT MANAGER, it must, if requested by PROJECT MANAGER, be uncovered for PROJECT MANAGER's observations and replaced at CONTRACTOR's expense.

***13.9.If PROJECT MANAGER considers it necessary***

or advisable that covered Work be observed by PROJECT MANAGER or inspected or tested by others, CONTRACTOR, at PROJECT MANAGER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as PROJECT MANAGER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if required (including but not limited to

fees and charges of engineer, architects, attorneys and other professionals).

**13.10.Owner May Stop the Work**

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

**13.11.Correction or Removal of Defective Work**

If required by PROJECT MANAGER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by PROJECT MANAGER, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineer, architects, attorneys and other professionals) made necessary thereby.

**13.12.One Year Correction Period**

If within one (1) year after the date of Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER, and in accordance with OWNER's written instruction, either correct such defective Work or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replace, and all direct, indirect and consequential costs of such removal and replacements (including but not limited to fees and charges of engineer, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where

a particular item of equipment is place in continuous service before Completion of all Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

### ***13.13. Acceptance of Defective Work***

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributed to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by PROJECT MANAGER as to reasonableness and to include but not limited to fees and charges of engineer, architects, attorneys and other professionals). If any such acceptance occurs prior to PROJECT MANAGER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in section 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

### ***13.14. OWNER May Correct Defective Work***

If CONTRACTOR fails within a forty-eight (48) hours time after written notice of PROJECT MANAGER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by PROJECT MANAGER in accordance with section 13.11 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, OWNER may, after seven (7) days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and 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, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site 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 representative, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by PROJECT MANAGER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in section 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

#### **14. PAYMENTS TO CONTRACTOR AND COMPLETION**

##### ***14.1. Schedule of Values***

The schedule of values established as provided in section 3.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to PROJECT MANAGER. Progress payments on account of Unit Price Work will be based on the number of units completed.

##### ***PURCHASING CARD PROGRAM:***

The City has implemented a purchasing card program through Sun Trust Bank, using the VISA network. Contractors with purchasing card capability will receive payment from the VISA purchasing card in the same manner as other Visa purchases. Accordingly, respondents with present purchasing card capability should have the ability to accept VISA or take whatever steps are necessary to implement such capability before the start of the agreement term. The City can only accept VISA, however, the

purchasing card is not the exclusive method of payment. Please indicate your ability to accept Visa purchasing card on Bid Form.

#### ***14.2.Application for Progress Payments***

At least twenty (20) days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to PROJECT MANAGER 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, charges, security interest and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be ten (10) percent except as otherwise provided in the Supplementary Conditions.

#### ***14.3.CONTRACTOR'S Warranty of Title***

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens. The Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Work. If any Subcontractor or Supplier fails to furnish a release or receipt, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

#### **14.4. Review of Applications for Progress Payment**

PROJECT MANAGER will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing PROJECT MANAGER's reason(s) for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty (30) days after presentation of the Application for Payment with PROJECT MANAGER's recommendation, the amount recommended will (subject to the provision of the last sentence of section 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

#### **14.5. PROJECT MANAGER's recommendation of any payment**

requested in an Application for Payment will constitute a representation by PROJECT MANAGER to OWNER, based on PROJECT MANAGER's on-site observations of the Work in progress as an experienced and qualified design professional and on PROJECT MANAGER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of PROJECT MANAGER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment PROJECT MANAGER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality of the Work beyond the responsibilities specifically assigned to PROJECT MANAGER in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

#### **14.6. PROJECT MANAGER's recommendation of final payment**

Will constitute an additional representation by PROJECT MANAGER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in section 14.14 have been fulfilled.

**14.7.PROJECT MANAGER may refuse to recommend**

The whole or any part of any payment if, in PROJECT MANAGER's opinion, it would be incorrect to make such representations to OWNER. PROJECT MANAGER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in PROJECT MANAGER's opinion to protect OWNER from loss because:

- a) the Work is defective, or completed Work has been damaged requiring correction or replacement,
- b) the Contract Price has been reduced by Written Amendment or Change Order,
- c) OWNER has been required to correct defective Work or complete Work in accordance with section 13.14, or
- d) of PROJECT MANAGER's actual knowledge of the occurrence of any of the events enumerated in section 15.2.

**14.8.OWNER may refuse to make payment**

of the full amount recommended by PROJECT MANAGER because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a set-off against the amount recommended, including liability for liquidated damages payable by the CONTRACTOR, but OWNER must give CONTRACTOR immediate written notice (with a copy to PROJECT MANAGER) stating the reasons for such action.

**14.9.Substantial Completion**

When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and PROJECT MANAGER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that PROJECT MANAGER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and PROJECT MANAGER shall make an inspection of the Work to determine the status of completion. If PROJECT MANAGER does not consider the Work substantially complete, PROJECT MANAGER

will notify CONTRACTOR in writing giving the reasons therefore. If PROJECT MANAGER considers the Work substantially complete, PROJECT MANAGER will prepare and deliver to OWNER a tentative certificate of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven (7) days after receipt of the tentative certificate during which to make written objection to PROJECT MANAGER as to any provisions of the certificate or attached list. If, after considering such objections, PROJECT MANAGER concludes that the Work is not substantially complete, PROJECT MANAGER will within fourteen (14) days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of OWNER's objections, PROJECT MANAGER considers the Work substantially complete, PROJECT MANAGER will within said fourteen (14) days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as PROJECT MANAGER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion PROJECT MANAGER will deliver to OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform PROJECT MANAGER prior to PROJECT MANAGER's issuing the definitive certificate of Substantial Completion, PROJECT MANAGER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

***14.10. Right to exclude CONTRACTOR from the Work***

OWNER shall have the right to exclude CONTRACTOR from the work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

***14.11. Partial Utilization***

Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents, or which OWNER, PROJECT MANAGER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER without significant

interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a) OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and PROJECT MANAGER that said part of Work is substantially complete and request PROJECT MANAGER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and PROJECT MANAGER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request PROJECT MANAGER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and PROJECT MANAGER shall make an inspection of that part of the Work to determine its status of completion. If PROJECT MANAGER does not consider that part of the Work to be substantially complete, PROJECT MANAGER will notify OWNER and CONTRACTOR in writing giving the reasons therefore. If PROJECT MANAGER considers that part of the Work to be substantially complete, the provisions of section 14.9 and section 14.10 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.
  
- b) OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to PROJECT MANAGER and within a reasonable time thereafter OWNER, CONTRACTOR and PROJECT MANAGER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and PROJECT MANAGER that such part of the Work is not ready for separate operation by OWNER, PROJECT MANAGER will finalize the list of items to be completed or corrected and will deliver such list to

OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed PROJECT MANAGER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of section 5.6 in respect of property insurance.

#### ***14.12.Final Inspection***

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, PROJECT MANAGER will 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 is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### ***14.13.Final Application for Payment***

After CONTRACTOR has completed all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, mark-up record documents (as provided in section 6.14) and other documents, all as required by the Contract Documents, and after PROJECT MANAGER has indicated that the Work is acceptable (subject to the provisions of section 14.17), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of

CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

#### ***14.14.Final Payment and Acceptance***

If, on the basis of PROJECT MANAGER's observation of the Work during construction and final inspection, and PROJECT MANAGER's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, PROJECT MANAGER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, PROJECT MANAGER will, within ten (10) days after receipt of the final Application for Payment, indicate in writing PROJECT MANAGER's recommendation of payment and present the Application to OWNER for payment. Thereupon PROJECT MANAGER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of section 14.17. Otherwise, PROJECT MANAGER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with PROJECT MANAGER's recommendation and notice of acceptability, the amount recommended by PROJECT MANAGER will become due and will be paid by OWNER to CONTRACTOR.

#### ***14.15.Delays***

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if PROJECT MANAGER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of PROJECT MANAGER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to

be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in section 5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to PROJECT MANAGER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **14.16. CONTRACTOR's Continuing Obligations**

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by PROJECT MANAGER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by PROJECT MANAGER pursuant to section 14.14 nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided in section 14.17).

#### **14.17. Waiver of Claims**

The making and acceptance of final payment will constitute:

- a) a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to section 14.12 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligation under the Contract Documents; and
- b) a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

**14.18. Completion of Work**

The Contractor shall prosecute the work with faithfulness and diligence and shall be entirely complete with the work not later than **240 calendar days** after receipt of Notice to Proceed.

**15. SUSPENSION OF WORK AND TERMINATION**

**15.1. OWNER May Suspend Work**

OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and PROJECT MANAGER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in section 11 and section 12.

**15.2. OWNER May Terminate**

Owner may terminate upon the occurrence of any one or more of the following events:

- a) if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code, as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;
- b) if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
- c) if CONTRACTOR makes a general assignment for the benefits of creditors;
- d) if a trustee, receiver, custodian or agent is appointed for CONTRACTOR under applicable law or under contract, whose appointment or authority is to take

charge of the property of the CONTRACTOR and for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

- e) if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;
- f) if CONTRACTOR persistently 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 under section 3.8 as revised from time to time);
- g) if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
- h) if CONTRACTOR disregards the authority of PROJECT MANAGER; or
- i) if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;
- j) OWNER may, after giving CONTRACTOR (and the surety, if there be one) seven (7) days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER had paid CONTRACTOR but which is stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) such excess may be withheld by and for the benefit of

the OWNER. If such costs exceed such unpaid balance, CONTRACTOR shall pay difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by PROJECT MANAGER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

- k) Notwithstanding the forgoing, the OWNER may elect to exercise the rights and remedies provided to the OWNER pursuant to the conditions of the CONTRACTOR'S performance and payment bonds. In such case, the OWNER will cooperate with the CONTRACTOR'S bonding companies, its agents, representatives, or employees in the completion of the work specified in the contract between the CONTRACTOR and the OWNER.
- l) Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR whether then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.
- m) Upon seven (7) days' written notice to CONTRACTOR and PROJECT MANAGER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained or incurred prior to the notice of termination from OWNER.

### ***15.3.CONTRACTOR May Stop Work or Terminate***

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or PROJECT MANAGER fails to act on any Application for Payment within thirty (30) days after it is submitted, or OWNER fails for thirty (30) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days' written notice to OWNER and PROJECT MANAGER, terminate the Agreement and recover from OWNER payment for all Work executed and expenses sustained. In

addition, and in lieu of terminating the Agreement, if PROJECT MANAGER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven (7) days' written notice to OWNER and PROJECT MANAGER stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under section 6.18 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

## **16. MISCELLANEOUS**

### ***16.1. Giving Notice***

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### ***16.2. Computation of Time***

- a) When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period fall on a Saturday or Sunday or on a day made a legal holiday by law of the applicable jurisdiction, such day will be omitted from the computation
- b) A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.
- c) All references today in this agreement are based on calendar days.

### ***16.3. General***

- a) Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance or notification of such injury or

damage. 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.

- b) The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by section 6.19, section 13.1, section 13.12, section 13.14, section 14.3, and section 15.2, and all rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this 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. All representations, warranties and guarantees made in the Contract Documents will survive final payment, termination, or the completion of the Agreement.

**17. Change Order Form**

Project: (Name, Address)

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

Purchase Order #: \_\_\_\_\_

Contractor: (Name, Address)

Change Order #: \_\_\_\_\_

You are hereby directed to make the following change(s) in this Contract:

1. The proposed basis of adjustment to the Contract Sum or Guaranteed Maximum Price is:

Lump Sum increase (decrease) of \$\_\_\_\_\_

Unit Price of \$\_\_\_\_\_ per \_\_\_\_\_

As follows:

2. The Contract Time is proposed to  be adjusted  
 remain unchanged

The proposed adjustment, if any, is  an increase of \_\_\_\_\_ days.  
 a decrease of \_\_\_\_\_ days.

Approvals
Architect/Engineer: _____
Building Official: _____
Finance Director: _____

Signature by the Contractor indicates the Contractor's agreement with the proposed adjustments in the Contract Sum and Contract Time set forth in the Change Order.
_____
Contractor
By: _____
Date: _____

When signed by the Owner and received by the Contractor, this document becomes effective IMMEDIATELY as a Change Order and the Contractor shall proceed with the change(s) above.
City of Miami Springs
By: _____
Date: _____

## BID PROPOSAL

The work to be performed under this Contract shall consist of furnishing all equipment, materials, supplies, and manufactured articles for furnishing all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the Contract in strict accordance with the Contract Documents.

Bid is accepted on a LUMP SUM BASIS. The itemized proposal form is provided only as an aid in assembling the bid and as a means of establishing costs for additions or deletions. This does not necessarily represent a complete itemized listing of all components necessary for a complete bid.

### DISADVANTAGE BUSINESS ENTERPRISE (DBE)

It is the policy of the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of federally financed contracts or subcontracts. To accomplish this goal, all local agencies and their contractors must take steps to ensure that DBEs are encouraged to compete for construction contracts, procurement contracts, grants, services financial aid, or other benefits, and that DBEs have full access to these opportunities.

#### 49 CFR 26

The Local Agency shall comply with FDOT's DBE Program Plan unless the Local Agency has a DBE Program Plan approved by the USDOT. Effective Oct. 2010; FDOT DBE Goal is 9.91% in its race neutral program. Establish a DBE Availability goal and include in bid document. Include DBE special provisions in bid document. Use DBE certified under the FL Unified Certification Program Directory:  
<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

The District Local Agency Program Administrator will arrange that the Department's Equal Opportunity Office provide training to Local Agencies, as necessary.

# **Section 4**

## **Federal and State Requirements per Local Agency Program (LAP) LAP Agreement Requirements**

# LAP AGREEMENT REQUIREMENTS

Because the project is funded in part by the Department of Transportation, additional requirements are included in the bid documents. These requirements are as follows:

## LAP checklist section and item

<u>Sub Section</u>	<u>LAP item</u>
1.	Plan, Specifications & Estimates
2.	Advertisement (minimum of 21 days)
3.	Bonding - Payment and Performance Bond with a surety company is required
4.	Buy America
5.	Certification of Current Capacity - FDOT FORM 525-010-46
6.	Change Orders
7.	Claims
8.	Contractor Purchased Equipment for State or Local Ownership- NOT ALLOWED
9.	Disadvantaged Business Enterprise (DBE) Form 275-030-11B
10.	E-Verify
11.	Equal Employment Opportunity
12.	Equipment Rental Rates
13.	FHWA Form 1273 - MAY NOT BE ALTERED
14.	Foreign Contractor and Supplier Restriction
15.	Incentive/Disincentive Clauses
16.	Indian Preference on Federal-Aid Projects (Labor & Employment)
17.	Liquidated Damages
18.	Lobbying Certification FDOT FORMS 375-030-33 or 375-030-34
19.	Local/State Hiring Preference- NOT ALLOWED
20.	Method of Construction (or Method of Bidding)
21.	Non-Collusion Provision - FDOT FORM 575-060-13
22.	On the Job Training
23.	Owner Force Account/Cost-Effective Justification- NOT ALLOWED
24.	Patented/Proprietary Materials - FDOT FORMS 630-020-005 or 630-020-07
25.	Prequalification
26.	Prevailing Minimum Wage: FL160221 01/08/2016 FL221
27.	Progress Payments/Estimates
28.	Prohibition Against Convict Produced Materials
29.	Public Agencies in Competition with the Private Sector - NOT ALLOWED
30.	Publicly-Owned Equipment - NOT ALLOWED
31.	Salvage Credits - NOT ALLOWED
32.	Standardized Changed Conditions Contract Clauses
33.	State (Florida or Other)-Produced Materials - NOT ALLOWED
34.	State/Local Owned/Furnished/Designated Materials - NOT ALLOWED
35.	Subcontracting
36.	Suspension and Debarment - FDOT FORM 375-030-32
37.	Termination of Contract
38.	Time Extensions
39.	Warranty Clauses - NOT ALLOWED
40.	LAP "Big 4": <ul style="list-style-type: none"><li>* Earthwork and Related Operations</li><li>* Concrete</li><li>* Hot Mix Asphalt</li><li>* Landscaping</li></ul>
41.	Additional Requirements - Project will be designed in accordance with the Florida Green Book

# 1. PLAN, SPECIFICATIONS & ESTIMATES

## References:

- 23CFR 635.309(a)
- LAP Agreement
- LAP Manual
- National Environmental Policy Act (NEPA)
- Contract Administration Core Curriculum Manual., FHWA HIPA-30, October 2014

This project is considered Non-SHS and Non NHS therefore the design must be in accordance with the Florida Green Book.

The contractor must use FDOT's pre-approved specifications for earthwork, concrete, asphalt, and landscaping items, or shall seek FDOT's and the City of Miami Springs approval for local agency specifications.

The project must be performed in accordance with all applicable FDOT procedures, guidelines, manuals, standards and directives as described in FDOT's Local Agency Program Manual, which is available at [http://www.dot.state.fl.us/programmanagement/LAP/LAP\\_TOC.shtm](http://www.dot.state.fl.us/programmanagement/LAP/LAP_TOC.shtm)

The Miami Dade County Archaeologist will monitor at his discretion all subsurface activities and shall be given a 72 hour notice prior to commencement of any excavations. Contractor is required to coordinate excavations with the County Archaeologist Jeff Ransom at 305-375-3412.

## 2. ADVERTISEMENT

References:

- 23 USC 112
- 23 CFR 635.112

Advertisement is in accordance with the minimum of 21 days per FDOT requirements.

Advertise Request for Proposal	May 26th, 2016
<b>Mandatory</b> Pre-Bid Meeting	June 2nd, 2016
Clarification deadline	June 3rd, 2016
Amendment (pending complexity)	June 7th, 2016
Bid Opening	June 21st, 2016
Recommendation of Award to City Manager and Council	June 27th, 2016
Pre-Construction Meeting	June 30th, 2016
Contract Start Date	July 5th, 2016
Construction End Date	August 31, 2016

### 3. BONDING

References:

- 255.05 F.S.
- 23 CFR 635.110(b)
- 2 CFR 200.325

**255.05 Bond of contractor constructing public buildings; form; action by claimants.—**

(1) A person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company.

(a) The bond must state on its front page:

1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity.
2. The contract number assigned by the contracting public entity.
3. The bond number assigned by the surety.
4. A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.

(b) Before commencing the work or before recommencing the work after a default or abandonment, the contractor shall provide to the public entity a certified copy of the recorded bond. Notwithstanding the terms of the contract or any other law governing prompt payment for construction services, the public entity may not make a payment to the contractor until the contractor has complied with this paragraph. This paragraph applies to contracts entered into on or after October 1, 2012.

(c) The bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in s. [713.01](#) who furnish labor, services, or materials for the prosecution of the work provided for in the contract. A claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a copy of the contract and the recorded bond. The claimant shall have a cause of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action may not involve the public authority in any expense.

(d) When the work is done for the state and the contract is for \$100,000 or less, no payment and performance bond shall be required. At the discretion of the official or

board awarding such contract when such work is done for any county, city, political subdivision, or public authority, a person entering into such a contract that is for \$200,000 or less may be exempted from executing the payment and performance bond. When such work is done for the state, the Secretary of Management Services may delegate to state agencies the authority to exempt any person entering into such a contract amounting to more than \$100,000 but less than \$200,000 from executing the payment and performance bond. If an exemption is granted, the officer or official is not personally liable to persons suffering loss because of granting such exemption. The Department of Management Services shall maintain information on the number of requests by state agencies for delegation of authority to waive the bond requirements by agency and project number and whether any request for delegation was denied and the justification for the denial.

(e) Any provision in a payment bond issued on or after October 1, 2012, furnished for public work contracts as provided by this subsection which further restricts the classes of persons protected by the bond, which restricts the venue of any proceeding relating to such bond, which limits or expands the effective duration of the bond, or which adds conditions precedent to the enforcement of a claim against the bond beyond those provided in this section is unenforceable.

(f) The Department of Management Services shall adopt rules with respect to all contracts for \$200,000 or less, to provide:

1. Procedures for retaining up to 10 percent of each request for payment submitted by a contractor and procedures for determining disbursements from the amount retained on a pro rata basis to laborers, materialmen, and subcontractors, as defined in s. [713.01](#).
2. Procedures for requiring certification from laborers, materialmen, and subcontractors, as defined in s. [713.01](#), before final payment to the contractor that such laborers, materialmen, and subcontractors have no claims against the contractor resulting from the completion of the work provided for in the contract. The state is not liable to any laborer, materialman, or subcontractor for any amounts greater than the pro rata share as determined under this section.

(g)1. The amount of the bond shall equal the contract price, except that for a contract in excess of \$250 million, if the state, county, municipality, political subdivision, or other public entity finds that a bond in the amount of the contract price is not reasonably available, the public owner shall set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.

2. For construction-management or design-build contracts, if the public owner does not include in the bond amount the cost of design or other nonconstruction services, the bond may not be conditioned on performance of such services or payment to persons furnishing such services. Notwithstanding paragraphs (c) and (e), such a bond may exclude persons furnishing such services from the classes of persons protected by the bond.

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM  
AGAINST PAYMENT BOND

To: (Name and address of claimant)

You are notified that the undersigned contests your notice of nonpayment, dated \_\_\_\_\_, \_\_\_\_\_, and served on the undersigned on \_\_\_\_\_, \_\_\_\_\_, and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on \_\_\_\_\_, \_\_\_\_\_ .

Signed: \_\_\_\_\_ (Contractor or Attorney)

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice shall be extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, furnish the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, services, or materials shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment shall be served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, materials, or supplies may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section shall be served in accordance with s. [713.18](#). A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for

bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion.

(b) When a person is required to execute a waiver of his or her right to make a claim against the payment bond in exchange for, or to induce payment of, a progress payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM  
AGAINST THE PAYMENT BOND  
(PROGRESS PAYMENT)

The undersigned, in consideration of the sum of \$ , hereby waives its right to claim against the payment bond 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) , for improvements to the following described project:

(description of project)

This waiver does not cover any retention or any labor, services, or materials furnished after the date specified.

DATED ON \_\_\_\_\_, \_\_\_\_\_ .

(Claimant)

By:

(c) When a person is required to execute a waiver of his or her right to make a claim against the payment bond, in exchange for, or to induce payment of, the final payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM  
AGAINST THE PAYMENT BOND  
(FINAL PAYMENT)

The undersigned, in consideration of the final payment in the amount of \$ , hereby waives its right to claim against the payment bond for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) , for improvements to the following described project:

(description of project)

DATED ON \_\_\_\_\_, \_\_\_\_\_ .

(Claimant)

By:

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c).

(e) A claimant who executes a waiver in exchange for a check may condition the waiver on payment of the check.

(f) A waiver that is not substantially similar to the forms in this subsection is enforceable in accordance with its terms.

(3) The bond required in subsection (1) may be in substantially the following form:

### PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number)

BY THIS BOND, We , as Principal and , a corporation, as Surety, are bound to , 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 , , between Principal and Owner for construction of , 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 action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section [255.05\(2\)](#), Florida Statutes.

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.

DATED ON , . (Name of Principal)

By (As Attorney in Fact)

(Name of Surety)

(4) The payment bond provisions of all bonds required by subsection (1) shall be construed and deemed statutory payment bonds furnished pursuant to this section and such bonds shall not under any circumstances be converted into common law bonds.

(5) In addition to the provisions of chapter 47, any action authorized under this section may be brought in the county in which the public building or public work is being constructed or repaired. This subsection shall not apply to an action instituted prior to May 17, 1977.

(6) All payment bond forms used by a public owner and all payment bonds executed pursuant to this section by a surety shall make reference to this section by number, shall contain reference to the notice and time limitation provisions in subsections (2) and (10), and shall comply with the requirements of paragraph (1)(a).

(7) In lieu of the bond required by this section, a contractor may file with the state, county, city, or other political authority an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in part II of chapter 625. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this section. The determination of the value of an alternative form of security shall be made by the appropriate state, county, city, or other political subdivision.

(8) When a contractor has furnished a payment bond pursuant to this section, he or she may, when the state, county, municipality, political subdivision, or other public authority makes any payment to the contractor or directly to a claimant, serve a written demand on any claimant who is not in privity with the contractor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known, as of the date of the statement by the claimant. Any such demand to a claimant who is not in privity with the contractor must be served on the claimant at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by the claimant. The failure or refusal to furnish the statement does not deprive the claimant of his or her rights under the bond if the demand is not served at the address of the claimant or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the claimant who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a claimant and none of the information regarding the account has changed since the claimant's last response to a demand, the failure or refusal to furnish such statement does not deprive the claimant of his or her rights under the bond. The negligent inclusion or omission of any information deprives the claimant of his or her rights under the bond to the extent that the contractor can demonstrate prejudice from such act or omission by the claimant. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed before the date the demand for statement of account is received by the claimant.

(9) On any public works project for which the public authority requires a performance and payment bond, suits at law and in equity may be brought and maintained by and against the public authority on any contract claim arising from breach of an express provision or an implied covenant of a written agreement or a written directive issued by the public authority pursuant to the written agreement. In any such suit, the public authority and the contractor shall have all of the same rights and obligations as a private person under a like contract except that no liability may be based on an oral modification of either the written contract or written directive. Nothing herein shall be construed to waive the sovereign immunity of the state and its political subdivisions from equitable claims and equitable remedies. The provisions of this subsection shall apply only to contracts entered into on or after July 1, 1999.

(10) An action, except an action for recovery of retainage, must be instituted against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies. An action for recovery of retainage must be instituted against the contractor or the surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies; however, such an action may not be instituted until one of the following conditions is satisfied:

(a) The public entity has paid out the claimant's retainage to the contractor, and the time provided under s. [218.735](#) or s. [255.073](#)(3) for payment of that retainage to the claimant has expired;

(b) The claimant has completed all work required under its contract and 70 days have passed since the contractor sent its final payment request to the public entity; or

(c) At least 160 days have passed since reaching substantial completion of the construction services purchased, as defined in the contract, or if not defined in the contract, since reaching beneficial occupancy or use of the project.

(d) The claimant has asked the contractor, in writing, for any of the following information and the contractor has failed to respond to the claimant's request, in writing, within 10 days after receipt of the request:

1. Whether the project has reached substantial completion, as that term is defined in the contract, or if not defined in the contract, if beneficial occupancy or use of the project has occurred.

2. Whether the contractor has received payment of the claimant's retainage, and if so, the date the retainage was received by the contractor.

3. Whether the contractor has sent its final payment request to the public entity, and if so, the date on which the final payment request was sent.

If none of the conditions described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d) is satisfied and an action for recovery of retainage cannot be instituted within the 1-year limitation period set forth in this subsection, this limitation period shall be extended until 120 days after one of these conditions is satisfied.

(11) When a contractor furnishes and records a payment and performance bond for a public works project in accordance with this section and provides the public authority with a written consent from the surety regarding the project or payment in question, the public authority may not condition its payment to the contractor on the production of a release, waiver, or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the surety, the payment bond, or the public authority for payments due on labor, services, or materials furnished on the public works project. The surety may, in a writing served on the public authority, revoke its consent or direct that the public authority withhold a specified amount from a payment, which shall be effective upon receipt. This subsection applies to contracts entered into on or after October 1, 2012.

History.—s. 1, ch. 6867, 1915; RGS 3533; s. 1, ch. 10035, 1925; CGL 5397; s. 1, ch. 59-491; s. 1, ch. 63-437; s. 1, ch. 71-47; ss. 1, 2, ch. 77-40; s. 1, ch. 77-78; s. 1, ch. 77-81; s. 1, ch. 80-32; s. 1, ch. 80-54; s. 1, ch. 82-196; s. 2, ch. 84-288; s. 2, ch. 85-130; s. 2, ch. 88-397; s. 21, ch. 90-109; s. 4, ch. 91-162; s. 176, ch. 92-279; s. 2, ch. 92-286; s. 55, ch. 92-326; s. 1, ch. 93-96; s. 5, ch. 94-322; s. 849, ch. 95-148; s. 25, ch. 95-196; s. 1, ch. 97-219; s. 1, ch. 98-135; s. 20, ch. 99-6; s. 33, ch. 99-13; s. 4, ch. 99-345; s. 2, ch. 99-386; s. 2, ch. 2001-118; s. 3, ch. 2001-211; s. 1, ch. 2005-218; s. 1, ch. 2005-227; s. 13, ch. 2005-230; s. 1, ch. 2007-159; s. 1, ch. 2007-221; s. 2, ch. 2012-211.

## 4. BUY AMERICA

### References:

- 23 CFR 635-410
- FDOT Standard Specification 6-5.2

*From Section 6 (Convict Labor and Buy America):*

### 6-5 Products and Source of Supply.

**6-5.1 Source of Supply–Convict Labor (Federal-Aid Contracts Only):** Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

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

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

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

**6-5.2 Source of Supply-Steel:** Use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, prestressed 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 manufacturer 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. Prior to 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.

**BUY AMERICA**

**CERTIFICATE OF COMPLIANCE**

The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323 (J) (1). Section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirements pursuant to Section 165 (b) (2) or (b) (4) of the Surface Transportation Assistance Act of 1982 and regulation in 49 CFR 661.7.

Firm Name \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

**BUY AMERICA**

**CERTIFICATE OF NON-COMPLIANCE**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323 (j) (1), Section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661.

Firm Name \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LAP CERTIFICATION OF CURRENT CAPACITY**

CONFIDENTIAL

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

Fill in your FDOT Vendor Number
VF _____
(Only applicable to FDOT pre-qualified contractors)

CERTIFICATE

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

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

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

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

I certify that the information above is correct.

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

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

By: \_\_\_\_\_

\_\_\_\_\_  
Title

**STATUS OF CONTRACTS ON HAND**

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

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

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**FHWA APPROVAL – MAJOR AND MINOR CONSTRUCTION CHANGES**

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Fin. Proj. ID: \_\_\_\_\_ F.A.P. No.: \_\_\_\_\_ S.A. No.: \_\_\_\_\_

County: \_\_\_\_\_ WPI No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Original Contract Amount: \$ \_\_\_\_\_ Estimated Cost of Changes: \$ \_\_\_\_\_

Granted Time: \_\_\_\_\_ days Premium Cost<sup>1</sup>: \$ \_\_\_\_\_

Reason for Granted Time: \_\_\_\_\_

Description of Changes:

Reason for Changes:

Work described from a Design Error or Omission:  Yes  No

Revised Plans Required:  Yes  No Revision Date: \_\_\_\_\_

Revised Plan Sheet Nos.: \_\_\_\_\_

<b>Negotiated Unit Prices:</b>			
<b>Item No.</b>	<b>Quantity</b>	<b>Item Description</b>	<b>Unit Price</b>

FHWA Prior Verbal Approval for Major Changes Granted By: \_\_\_\_\_ Received by: \_\_\_\_\_  
Name Title Date Initials

Recommended by: \_\_\_\_\_  
District Construction Engineer Date

Approved: \_\_\_\_\_ FHWA Participating<sup>2</sup>: Cost \$ \_\_\_\_\_  
FHWA District Transportation Engineer Date Time (days): \_\_\_\_\_

All major changes in the plans or contract provisions must be approved in writing by FHWA in advance of their effective dates except that when emergency or unusual conditions justify, FHWA may give tentative advance approval orally and ratify such approval in writing as soon thereafter as practicable. Documentation of verbal approval (when applicable) is required above before submitting this form to FHWA for written approval. All minor changes shall be approved in writing by FHWA retroactively.

<sup>1</sup> Premium Cost is defined as additional cost which would not have been incurred if the work described herein had been included in the original contract.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
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<sup>2</sup> Attach reasons justifying FHWA participation.

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Description of Changes (continued):

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Reason for Changes (continued):

## 6. CHANGE ORDERS

### References:

- 23 CFR 635.120
- FDOT CPAM 7.3.11

### 7.3.11

## Participation for Construction Contract Changes on Federal Aid Projects

### 7.3.11.1 General

Federal Aid participation in all changes to Department Construction Contracts shall be determined as required by ***Federal Aid Policy Guide 23, CFR Section 635.120.***

The following project changes shall be Federal Aid Non-Participating:

- (A) Spare parts turned over to the maintaining agency and not incorporated into the construction.
- (B) Material or equipment called for in the plans but not used in the construction.
- (C) Closed drainage systems on structures not justified in the environmental process.
- (D) Fishing Piers.
- (E) Drainage items, including water retention ponds, not supported through the environmental process.
- (F) Premium costs due to design or CEI errors or omissions.
- (G) Sole source items unless specifically approved by the Federal Highway Administration prior to project authorization.
- (H) Construction changes for items that were set up as alternate bid items.
- (I) Repairing items that had not been properly maintained (cleaning pipe, etc.)
- (J) Additional contract time and/or costs for utility or right of way delays beyond what was identified in the contract documents.
- (K) Additional contract time and/or costs to attain greater vertical or horizontal bridge clearance than deemed necessary to fulfill the intent of the original project documents.

- (L) Additional contract time and/or costs due to arbitrary one foot or less backwater criteria in construction or reconstruction of Interstate Highway Bridges.
- (M) MOT items for Federal Aid Non-participating time extensions.
- (N) Work resulting from insufficient subsoil investigation.
- (O) Claim Settlement Costs paid solely to avoid the risk associated with failing to settle the claim as defined in **CPAM Section 7.5.3**.

### 7.3.11.2 FHWA Oversight Projects Resident

#### Level Responsibilities

The Resident Engineer on In-house CEI projects and the Department's Construction Project Manager on Consultant CEI projects shall solicit FHWA approval of and participation in all construction contract changes on all FHWA Oversight projects. Federal-Aid participation shall be documented on the **FHWA Approval - Major and Minor Construction Changes, Form No. 700-010-47**, FHWA refusal to participate in any construction contract change should be followed-up with an additional attempt to obtain Federal Aid participation by supplying all necessary additional information or explanations. The Resident Engineer on In-house CEI projects and the Department's Construction Project Manager on Consultant CEI projects should solicit the reason for any FHWA refusal to participate in any construction contract change. Such reason for non-participation shall be noted in the **FHWA Approval - Major and Minor Construction Changes** form or attachment thereto. Should FHWA refuse to supply a reason, such refusal should also be noted in the document or on the attachment as part of the pertinent information included in the complete contract change package.

- (1) **Major Changes** - All major changes in the plans and specifications must be approved in writing by FHWA on the **FHWA Approval - Major and Minor Construction Changes** form prior to approval of the changes by the Secretary or designee prior to giving the Contractor written notice to proceed with work. When emergency or unusual conditions exist, FHWA may give tentative prior approval verbally and ratify such approval in writing as soon thereafter as practical.

Major changes include the following:

- Revisions of geometric design (main roadway, ramps, frontage roads, or crossroads) including any project and construction limit extensions.

(NOTE: Project and Construction Limit Extension approval requests must be forwarded through the State Construction Office in accord with **CPAM Section 7.3.6.2**).

- Revisions of pavement structural sections.
- Revisions in conflict with standards.

- Revisions, additions, deletions, or relocation of structures.
- Any changes in the plan access control.
- Any changes that alter specifications, special provisions or other contract requirements, including previously approved provisions.
- Any changes in material type or quality.
- The grant of any additional contract time in a Supplemental Agreement.
- Any time extensions.
- Any adjustments to the contract made by the engineer because of a significant change when acceptable prices cannot be obtained through negotiations.
- Contract claim settlements.
- Revisions of pavement structural sections.
- **Supplemental Agreements and Unilateral Payments** that total \$50,000.00 or more, or five (5) percent or more of the original total contract amount, whichever is less.
- Substantial overruns or underruns.

FHWA prior written approval for all major changes in the plans and contract provisions shall be documented on the **FHWA Approval - Major and Minor Construction Changes** form. FHWA may give tentative prior verbal approval for major changes, when justified by emergency or unusual conditions. When this occurs, it shall be documented on the **FHWA Approval - Major and Minor Construction Changes** form. The document should note who granted the verbal approval, the date granted, and who received the verbal approval before submitting that document for FHWA written approval. That document shall be submitted for FHWA written approval as soon as practical following receipt of verbal approval.

A copy of all pertinent information justifying the request for FHWA approval and participation must be included with the document prepared for FHWA approval. information shall include, but not be limited to:

- The reasons for quantity overruns and underruns.
- The Entitlement Analysis, the Engineer's Estimate and, where claim settlement costs have been incurred, a Statement of Claim Settlement Cost (see CPAM Section 7.5.3 for a description of that statement).
- Documentation of concurrence from the Director, Office of Construction for all changes to contract specifications and extensions of the project and construction limits.

- All related correspondence that may be pertinent to FHWA concerns.
- (2) **Minor Changes** - All minor changes in the plans and specifications shall be approved in writing by FHWA retroactively. All project changes other than major changes shall be classified as minor changes.

FHWA retroactive written approval for all minor changes shall be documented on ***FHWA Approval - Major and Minor Construction Changes, Form No. 700- 010-47.*** FHWA may elect to approve minor changes by having the document sent to them for signature or by signing the document at the time of a routine field visit.

A copy of all pertinent information justifying the request for FHWA approval and participation must be included with the document prepared for FHWA approval. Such information shall include, but not be limited to, the basis for determining the need for the changes, the ***Engineer's Estimate***, and the ***Entitlement Analysis***, the basis for determining changes to contract time, and all related correspondence which may be pertinent to FHWA concerns.

- (3) **Minor Overruns or Underruns** - Minor overruns or underruns will not require prior FHWA approval. Such overruns or underruns will be reviewed for approval by FHWA in its review of the project final estimate.

### **7.3.11.3 District Oversight (Delegated) Projects**

Neither FHWA approval nor State Construction Office concurrence in Federal Aid participation is required on Delegated Projects.

#### **(A) Resident Level Responsibilities**

The Resident Engineer's staff shall develop the contract change document, submit the document to the District Construction Engineer for review and solicit a determination of FHWA participation before any payment is made on the contract change or any item included in the contract change.

#### **(B) District Level Responsibilities**

The District Construction Engineer shall determine the Federal Aid participation in accordance with the guidelines shown in ***CPAM Section 7.3.11.1.*** The District Construction Engineer can delegate such approval authority, in writing, to a person within the District Construction Office staff, but not to a Resident Engineer. Such delegation shall be maintained on file in the District Construction Office. Approval shall be documented in writing showing the amount of federal aid participation for all pay items included in the contract change and must be signed and dated by the District Construction Engineer or delegate and included in the project file for that contract change. An email from the District Construction Engineer or delegate will suffice as documentation of approval.

## 7. CLAIMS

### References:

- 23 CFR 635.124
- FDOT CPAM 7.5
- FDOT Std Spec 5-12

### FDOT'S Division 1 Specifications:

*From Section 5 (Claims)*

#### 5-12 Claims by Contractor.

**5-12.1 General:** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

#### 5-12.2 Notice of Claim:

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate

of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

**5-12.2.2 Claims For Delay:** Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in 5-12.3 and duly certified pursuant to 5-12.9.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(a) and (c), and then only to the extent the Contractor could not reasonably mitigate such idleness.

**5-12.3 Content of Written Claim:** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

(a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;

(b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;

(c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;

(d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

(e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:

- (1) documented additional job site labor expenses;
- (2) documented additional cost of materials and supplies;
- (3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
- (4) any other additional direct costs or damages and the documents in support thereof;
- (5) any additional indirect costs or damages and all documentation in support thereof.

(f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

**5-12.4 Action on Claim:** The Engineer will respond on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per 5-11 of all Contract work by the Department or denial hereunder, whichever occurs last.

**5-12.5 Pre-Settlement and Pre-Judgment Interest:** Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

### **5-12.6 Compensation for Extra Work or Delay:**

**5-12.6.1 Compensation for Extra Work:** Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

**5-12.6.2 Compensation for Delay:** Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, supplemental agreements, work orders, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract Time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

**5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay:** For any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

**5-12.7 Mandatory Claim Records:** After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

**5-12.8 Claims For Acceleration:** The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

**5-12.9 Certificate of Claim:** When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is

made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

**5-12.10 Non-Recoverable Items:** The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;
- b. Any claim for other than extra work or delay;
- c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense"; nor
- e. Attorney fees, claims preparation expenses and costs of litigation.

**5-12.11 Exclusive Remedies:** Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

**5-12.12 Settlement Discussions:** The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

**5-12.13 Personal Liability of Public Officials:** In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

**5-12.14 Auditing of Claims:** All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the Contractor or its subcontractors, material men or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request for copies provide copies at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

## **8. CONTRACTOR PURCHASED EQUIPMENT FOR STATE OR LOCAL OWNERSHIP**

**References:**

- 23 CFR 140
- 2 CFR 200.313

**Contractor purchased equipment for State or City ownership is not allowed.**

## 9. DISADVANTAGE BUSINESS ENTERPRISE (DBE)

### References:

- 49 CFR 26
- 49 CFR 26.45
- LAP Manual Chapter 14
- FDOT Std. Spec 7-24

Contractors must enter their bid opportunity information in the [Equal Opportunity Compliance \(EOC\) System](#) within 3 business days of submission of the bid for all subcontractors who quoted bids for FHWA-assisted projects. Use FDOT contract number for reporting.

### 7-24 Disadvantaged Business Enterprise Program.

**7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan:** Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

**7-24.2 Required Contract and Subcontract DBE Assurance Language:** In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate."

**7-24.3 Plan Requirements:** Include the following in the DBE Affirmative Action Program Plan:

1. A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor's organization.

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

3. Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

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

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

c. Carrying out information and communication programs or workshops on

contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

d. Encouraging eligible DBEs to apply for certification with the Department.

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

**7-24.4 DBE Records and Reports:** Submit the following through the Equal Opportunity Compliance System:

1. DBE Commitments - at or before the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

1. the procedures adopted to comply with these Specifications;

2. the number of subordinated Contracts on Department projects awarded to

DBEs;

3. the dollar value of the Contracts awarded to DBEs;

4. the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;

5. a description of the general categories of Contracts awarded to DBEs; and

6. the specific efforts employed to identify and award Contracts to DBEs.

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

Maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

**7-24.5 Counting DBE Participation and Commercially Useful Functions:**

49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE Commitments, only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Update DBE Commitments to reflect changes to the initial amount that was previously reported or to add DBEs not initially reported.

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

1. The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.

2. The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

3. When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is

itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

4. When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

5. The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract may be counted toward the voluntary DBE goal.

6. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

7. Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

8. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

9. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

10. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

**7-24.6 Prompt Payments:** Meet the requirements of 9-5 for payments to all DBE subcontractors.

_____ hereafter referred to as “the Company” or “this Company” has adopted this policy and plan.			
Date:	_____	By: _____	Signature
Corporate FEID No.:	_____	_____	Printed name & title

## DISADVANTAGED BUSINESS ENTERPRISE (‘DBE’) AFFIRMATIVE ACTION PLAN

### POLICY STATEMENT

It is the policy of this Company that disadvantaged businesses, as defined by 49 CFR Part 26, Subpart D and implemented under Rule Chapter 14-78, F.A.C., shall have the opportunity to participate as subcontractors and suppliers on all contracts awarded by the Florida Department of Transportation (FDOT).

The requirements of Rule Chapter 14-78, F.A.C., shall apply to all contracts entered into between FDOT and the Company. Subcontractors and/or suppliers to the Company will also be bound by the requirements of Rule Chapter 14-78 F.A.C. and its subcontractors shall take all necessary and reasonable steps in accordance with Chapter 14-78, F.A.C., to ensure that disadvantaged businesses have the opportunity to compete and perform work contracted with FDOT. The Company and its subcontractors shall not discriminate on the basis of race, color, religion, national origin, disability, sex, or age in the administration of contracts with FDOT. The Company has designated and appointed a Liaison Officer to develop, maintain, and monitor the DBE Affirmative Action Plan implementation. The Liaison Officer will be responsible for disseminating this policy statement throughout the Company and to disadvantaged controlled businesses. This statement is posted on notice boards of the Company.

### I. DESIGNATION OF LIAISON OFFICER

The Company will aggressively recruit disadvantaged businesses as subcontractors and suppliers for all contracts with FDOT. The Company has appointed a Liaison Officer to develop and maintain this Affirmative Action Plan in accordance with the requirements of Rule Chapter 14-78, F.A.C. The Liaison Officer will have primary responsibility for developing, maintaining, and monitoring the Company's utilization of disadvantaged subcontractors in addition to the following specific duties:

- (1) The Liaison Officer shall aggressively solicit bids from disadvantaged business subcontractors for all FDOT contracts;
- (2) The Liaison Officer will submit all records, reports, and documents required by FDOT, and shall maintain such records for a period of not less than three years, or as directed by any specific contractual requirements of FDOT.

The following individual has been designated Liaison Officer with responsibility for implementing the Company's affirmative action program in accordance with the requirements of FDOT.

<b>DBE LIAISON OFFICER:</b>
<b>NAME:</b>
<b>TITLE:</b>
<b>EMAIL:</b>
<b>ADDRESS:</b>

## II. AFFIRMATIVE ACTION METHODS

In order to formulate a realistic Affirmative Action Plan, the Company has identified the following known barriers to participation by disadvantaged subcontractors, before describing its proposed affirmative action methods:

1. Lack of qualified disadvantaged subcontractors in our specific geographical areas of work;
2. Lack of certified disadvantaged subcontractors who seek to perform FDOT work;
3. Lack of interest in performing on FDOT contracts;
4. Lack of response when requested to bid;
5. Limited knowledge of FDOT plans and specifications to prepare a responsible bid.

In view of the barriers to disadvantaged businesses stated above, it shall be the policy of the Company to provide opportunity by utilizing the following affirmative action methods to ensure participation on the contracts with FDOT will:

1. Provide written notice to all certified DBE subcontractors in the geographical area where the work is to be subcontracted by the Company;
2. Advertise in minority focused media concerning subcontract opportunities with the Company;
3. Select portions of work to be performed by DBEs in order to increase the likelihood of meeting the state's goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
4. Provide adequate information about the plans, specifications, and requirements of the contract, not rejecting subcontractors without sound reasons based on a thorough investigation of their capabilities;
5. Waive requirements of performance bonds where it is practical to do so;
6. Attend pre-bid meetings held by FDOT to apprise disadvantaged subcontractors of opportunities with the Company;
7. Follow up on initial solicitations of interest to DBE subcontractors to determine with certainty whether the DBE company is interested in the subcontract opportunity.
8. Utilize FDOT's DBE Supportive Services providers for assistance in identifying and notifying DBE's of contracting opportunities.

The Company understands that this list of affirmative action methods is not exhaustive and will include additional approaches after having established familiarity with the disadvantaged subcontracting community and/or determined the stated approaches to be ineffective.

## III. IMPLEMENTATION

The Company will make every effort to

1. Meet state goals by utilizing its affirmative action methods.
2. Express good faith by seeking to utilize DBE subcontractors where work is to be subcontracted.
3. Ensuring that contracted DBE's perform a commercially useful function as evidenced by their execution of a distinct element of work with its own workforce and the carrying out responsibilities by actually performing, managing and supervising the work involved.

## IV. REPORTING

The Company shall keep and maintain such records as are necessary to determine the Company's compliance with its DBE Affirmative Action Plan. The Company will design its record keeping system to indicate:

1. The number of DBE subcontractors and suppliers used by the Company, identifying the items of work, materials and services provided;
2. The efforts and progress being made in obtaining DBE subcontractors through local and community sources;
3. Documentation of all contracts, to include correspondence, telephone calls, newspaper advertisements, etc., to obtain DBE participation on all FDOT projects;
4. The Company shall comply with FDOT's requirements regarding payments to subcontractors including DBEs for each month (estimate period) in which the companies have worked.

## V. DBE DIRECTORY

The Company will utilize the DBE Directory published by the FDOT.

## 10. E-Verify

### References:

- Florida Governor's Executive Order 11-116
- FDOT SP00728000

### 7-28 E-Verify

#### The Contractor:

1. Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the term of the contract; and

2. Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

## 11. EQUAL EMPLOYMENT OPPORTUNITY

### References:

- 23CFR 230
- DOT 1050.2
- FDOT SP0073000

### 7-30 Title VI Assurance – DOT 1050.2A, Appendix A and Appendix E.

**7-30.1 Appendix A:** During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the US Department of Transportation (hereinafter, “USDOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the basis of race, color, national origin or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for subcontractors, including procurements of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, or sex.

4. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, order and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor’s noncompliance with the nondiscrimination provisions of this Contract, the Florida Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the Contractor under the Contract until the Contractor complies, or
- b. cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of the 7-30.1 through 7-30.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**7-30.2 Appendix E:** During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor” agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired of Federal or Federal-aid programs and projects);
3. Federal-Aid Highway Act of 1973, (23 U.S.C § 324 et seq.), (prohibits discrimination on the basis of sex);
4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color national origins or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

In connection with the carrying out of any project, the Contractor shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement or similar work, the Contractor shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the City of Miami Springs and the Department setting forth the provisions of the nondiscrimination clause.

### **Executive Order 11246**

The City of Miami Springs and Contractor hereby agrees to comply with the following Federal Statutes, U. S. Department of Transportation (USDOT) and Federal Highway Administration (FHWA) Regulations, and the policies and procedures of the Florida Department of Transportation (Department).

### **Title VI – Civil Rights Act of 1964:**

The Contractor will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued there under, and the assurance by the Contractor pursuant thereto.

The Contractor shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

**Title VI** of the Civil Rights Act of 1964 and related statutes state that no person should be excluded participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the grounds of: race, color, national origin, sex, age, disability, religion, or familial status. The Civil Rights Restoration Act of 1987 provided clarification of the original intent of Congress in Title VI and restored broad institution-wide scope and coverage to all programs and activities of federal-aid recipients, sub-recipients, and contractors, whether such programs and activities are federally funded or not. Institutions may include schools and colleges, government entities, or private employers.

Non-discrimination programs require that Federal-aid recipients, Sub-recipients, and Contractors prevent discrimination and ensure non-discrimination in all of their programs and activities. This applies whether those programs and activities are federally funded or not. If a unit of a State or local government receives Federal-aid and distributes that aid to another governmental entity, all of the actions of the Recipient and Sub-recipient are covered. If corporations, partnerships, or other private organizations or sole proprietorships receive Federal financial assistance, they are completely covered (FHWA Notice N 4720.6, September 2, 1992).

The City of Miami Springs and Contractor **HEREBY ASSURES:**

A. That no person will be excluded from participation in, denied the benefits of, or subjected to other discrimination under any program or activity of the City of Miami Springs and Contractor on the grounds of: race, color, national origin, sex, age, disability, religion, and familial status. This is regardless of whether those programs and activities receive Federal funding. Activities and programs which the City of Miami Springs and Contractor agrees to carry out in compliance with Title VI and related statutes include but are not limited to all major programs and activities of the City of Miami Springs and Contractor.

B. That it will promptly take any measures necessary to put this agreement into practice.

C. That each program and activity will be conducted, and the facility will be operated in compliance with the nondiscriminatory requirements of this agreement. Programs, activities, and facilities are defined in 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987.

D. That these pledges are given to obtain any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended by the Department to the City of Miami Springs and Contractor from now onwards. The pledges bind the Department, other Sub-recipients, Sub-grantees, Contractors, Sub-contractors, Transferees, Successors in interest, and other participants in the Local Agency Program. The person or persons who sign this local agency agreement have the authority to sign these assurances on behalf of the City of Miami Springs and Contractor.

E. That the City of Miami Springs and Contractor will insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all local agency programs. The notification must also be in adapted form in all proposals for negotiated agreements. In any contract made after this advertisement, the City of Miami Springs and Contractor will notify all bidders that it will insure that disadvantaged business enterprises have full opportunity to submit bids in response to the invitation.

F. The bidders will not be discriminated against on the grounds of: race, color, national origin, sex, age, or disability in consideration for an award. This nondiscrimination is in agreement with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-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. Disadvantaged business enterprises are defined in 49 CFR Part 26. The City

of Miami Springs and Contractor will insert the clauses of Appendix A of this agreement in every contract subject to the Act and the Regulations.

G. That the United States has a right to seek judicial enforcement in any topic arising under the Act, the Regulations, and this agreement.

### **REHABILITATION ACT OF 1973, SECTION 504**

Section 504 of the Rehabilitation Act, as amended, and related statutes provides that no person shall on the ground of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Section 504 to specify that entire institutions receiving Federal funds - whether schools and colleges, government entities, or private employers – must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

26.2.2 Section 504 requires that Federal-aid recipients, subrecipients, and Contractors prevent discrimination and ensure non-discrimination in all of their programs and activities, whether those programs and activities are federally funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the Recipient and Sub-recipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA Notice N 4720.6, September 2, 1992).

### **AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

The Contractor will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued there under, and assurance by the Contractor pursuant thereto.

The Americans with Disabilities Act, as amended, and related statutes provides that no person shall on the ground of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, whether or not the program or activity receives Federal financial assistance.

The ADA requires that State and local government entities and Contractors prevent discrimination and ensure non-discrimination in all of their programs and activities, whether those programs and activities are federally funded or not. Corporations, partnerships, or other private organizations are also covered under the ADA.

The ADA requires State and local government entities with 50 or more employees to:

A. Issue a policy statement, which expresses its commitment to the nondiscrimination provisions of the ADA and Section 504. The policy statement shall be circulated throughout the Sub-recipient's organization and to the general public.

B. Have a complaint process to respond to accessibility complaints

C. Designate an ADA contact and publish their name and phone number.

**ASSURANCES (49 CFR PART 27.9)**

The City of Miami Springs and Contractor hereby gives assurances:

A. That no person shall on the grounds of disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the Sub-recipient or Contractor regardless of whether those programs and activities are Federally funded or not. Activities and programs which the City of Miami Springs and Contractor hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to all major programs and activities of the City of Miami Springs and Contractor.

B. That it will promptly take any measures necessary to effectuate this agreement.

C. That each program, activity, and facility as defined at 49 CFR 27.5 and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.

D. That these assurances are effective the date of this agreement between the City of Miami Springs and Contractor and is binding on it, other Sub-recipients, Sub grantees, Contractors, Sub-contractors, Transferees, Successors in interest and other participants in the Local Agency Program.

E. That the City of Miami Springs and Contractor shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all local agency programs and, in adapted form in all proposals for negotiated agreements:

“The City of Miami Springs and Contractor, in accordance with Section 504 of the Rehabilitation Act and Title 49, Code of Federal Regulations, Department of Transportation, Part 27 – Nondiscrimination on the basis of disability in programs or activities receiving federal financial assistance, and under ADA whether or not there is federal financial assistance.

F. The City of Miami Springs and Contractor agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the ADA and Section 504, the Regulations, and this agreement.

**Public Entity Crime:**

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 on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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 from the date of being placed on the convicted vendor list.

**Discrimination:**

In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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.

**Prohibited Interests:**

Neither the Contractor nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer or employee of the Contractor or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Contractor, the Contractor, with prior approval of the City of Miami Springs and the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Contractor or the locality relating to such contract, subcontract or arrangement.

The Contractor shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Contractor or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Contractor and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental Contractor.

**Vendors Rights:**

Vendors (in this document identified as the Contractor) providing goods and services to the City of Miami Springs and the Department should be aware of the following time frames. Upon receipt, the Department has 30 working days to inspect and approve the goods and services

unless the bid specifications, purchase order or contract specifies otherwise. The City of Miami Springs has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days after receipt of the invoice and the receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3) (b), Florida Statutes, will be due and payable in addition to the invoice amount to the Contractor. Interest penalties of less than one \$1 will not be enforced unless the Contractor requests payment. Invoices which have to be returned to the Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the City of Miami Springs and the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at 850-413-5516.

### **Equal Employment Opportunity**

To effectively assure Equal Employment Opportunity (EEO), the Federal Highway Administration (FHWA) requires that all federal aid highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations (29 CFR Subtitle A, Parts 30, 31 and 32). These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for federal aid funds, the Local Agency must comply with the civil rights requirements (26 CFR Chapter 1, Part 230).

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, age, disability, or national origin. 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."

Firm Name \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

**Appendix A: The United States Department of transportation (US DOT) Standard Title VI/Nondiscrimination Assurances, DOT Order No.: 1050.2A**

**The United States Department of Transportation (USDOT)**

**Standard Title VI/Nondiscrimination Assurances**

**DOT Order No. 1050.2A**

The (**Title of Recipient**) (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through RITA, is subject to and will comply with the following:

**Statutory/Regulatory 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);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

**RITA may include additional Statutory/Regulatory Authorities here.**

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

**General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including RITA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

**RITA may include additional General Assurances in this section, or reference an addendum here.**

### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted University Transportation Centers Program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all University Transportation Centers Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*The (Title of Recipient), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively insure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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, or national origin in consideration for an award.*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or

structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

**RITA may include additional Specific Assurances in this section.**

By signing this ASSURANCE, [Name of the recipient] also agrees to comply (and require any subrecipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the **RITA** access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by **RITA**. You must keep records, reports, and submit the material for review upon request to **RITA**, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Name of Recipient] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the **University Transportation Centers Program**. This ASSURANCE is binding on [Name of Recipient], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the **University Transportation Centers Program**. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

## **LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC – TITLE VI ASSURANCE**

**DOT 1050.2, APPENDIX A. (REV 11-12-13) (FA 11-26-13) (3-14) SECTION 7 is expanded by the following new Article: 7-30 Title VI Assurance – DOT 1050.2, Appendix A.**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows: 7-30.1 Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the US Department of Transportation (hereinafter, “USDOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract. 7-30.2 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. 7-30.3 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. 7-30.4 Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, order and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information. 7-30.5 Sanctions for Noncompliance: In the event of the Contractor’s noncompliance with the nondiscrimination provisions of this Contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to: a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or b. cancellation, termination or suspension of the Contract, in whole or in part. 7-30.6 Incorporation of Provisions: The Contractor shall include the provisions of the 7-30.1 through 7-30.6 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.

# Executive Order 11246 - Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

## Part I - Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

## Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

### Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

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

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

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by

the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other

contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved;

(2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further,

That, in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

#### Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any

implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

#### Subpart D - Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue, or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules,

regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p 230]

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

#### Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

#### Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to

Part II, Subpart D, of this Order, and (4) to

refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the

administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder. Part IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal

Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

## 12. EQUIPMENT RENTAL RATES

### References:

- 23 CFR 635.120
- 48 CFR 31

**Actual costs, rate guides, and rate schedules.** Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not readily available. Therefore, the FHWA permits SHA's to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rate schedules developed by SHA's which are in conformance with the Federal cost principles and the FHWA's policy contained herein. The Federal cost principles applicable to rental rates for contractor furnished equipment are contained in 48 CFR, Part 31. The provisions in OMB Circular A-87 apply when State-owned equipment is used.

**Rental Rate Guides.** A State may, subject to the FHWA's concurrence, adopt the Dataquest **Rental Rate Blue Book** (Blue Book) or another industry rate guide, or it may develop its own guide. The State must make the determination that the equipment rental rates developed or adopted fairly estimate a contractor's actual cost to own and operate the equipment. It is the FHWA's responsibility to review each State's rates for compliance with the policy.

**Adjustment Factors.** Equipment is not expected to operate for 12 consecutive months. Maps at the beginning of each Blue Book equipment section indicate adjustment factors based on climate and regional costs. Rate adjustment tables indicate adjustment factors based on equipment age. The adjustment factors in the maps and tables are to be applied when determining the eligible rate.

**Maximum Rate.** The Blue Book adjusted rates cover all eligible equipment related costs. Therefore, they are considered to be the maximum eligible rates for Federal-aid participation purposes.

**Hourly Rates.** The developer of the Blue Book accumulates all contractor costs for owning a piece of equipment on an hourly basis. The monthly rate displayed in the rental guide is determined by multiplying the hourly accumulated costs by the monthly standard of 176 hours. Therefore, for periods of equipment use less than the standard 176 hours per month, Federal-aid participation shall be limited to the hourly rate obtained by dividing the monthly rate by 176. Premium rates contained in the rate guides shall not be used.

**Standby Equipment Rates.** The contractor continues to incur certain ownership costs when equipment is required to be on standby. The use of a standby rate is appropriate when equipment has been ordered to be available for force account work but is idle for reasons which are not the fault of the contractor. While an industry standard does not exist for standby rates, it has been the normal practice of the courts to reduce published ownership rental guide rates by 50 percent for standby rate usage. Therefore, the FHWA will accept use of 50 percent of the ownership rental rates of an approved guide as the standby rate in lieu of a contractor's actual standby costs. There should be no operating costs included in the rate used and standby time should not exceed 8 hours per day, 40 hours per week, or the annual usage hours as established by the rate guide.

**Mobilization.** The costs required to mobilize and demobilize equipment not available on the project is eligible for reimbursement. Standby rates should be used for equipment while being hauled to and from the project. This will be in addition to applicable rates for the hauling equipment. All costs associated with the assembly and disassembly of the equipment for transport should also be considered in the mobilization costs.

**Overhead.** Equipment overhead includes such items as insurance, property taxes, storage, licenses and recordkeeping. The Blue Book rates include all equipment overhead costs. Therefore, if a project or home office overhead rate is proposed to be applied to a Blue Book rate, the State must ensure that it contains no equipment overhead cost factors. The reasonableness of such a rate shall be determined by the Division Administrator.

**Profit.** Profit on equipment rental is not provided for in the approved rate guides. There is no Federal regulation which prevents the addition of an amount for profit. If a State has a policy for the payment of profit, it should be followed on Federal-aid contracts. If a profit amount is to be used, the reasonableness must be determined by the Division Administrator based on experience.

**Contractor Leased Equipment.** When a contractor obtains equipment through a third party rental agreement for use in a force account situation, the cost will normally be the invoice cost.

**The Associated Equipment Distributors (AED) Rental Rate and Specifications** may be used to evaluate the costs for such equipment rental. [The AED Book is not acceptable as a rate guide for contractor owned equipment. The AED rates are based on national averages of rates charged by equipment distributors and do not reflect the contractor's cost of owning and operating the equipment.] Since rental agreements vary, the specific operating costs included in the rental agreement may need to be determined. There may be additional eligible operating costs not covered by the agreement which the contractor incurs and should be reimbursed (i.e., fuel, lubrication, field repairs, etc.).

**Title            48:            Federal            Acquisition            Regulations            System  
PART           31—CONTRACT           COST           PRINCIPLES           AND           PROCEDURES  
Subpart 31.2—Contracts With Commercial Organizations**

**31.205-36**

**Rental costs.**

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases. (See 31.205-11 for Capital Leases.)

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of (i) rental costs of comparable property, if any; (ii) market conditions in the area; (iii) the type, life expectancy, condition, and value of the property leased; (iv) alternatives available; and (v) other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title, computed based on the net book value of the asset on the date the contractor becomes a lessee of the property adjusted for any gain or loss recognized in accordance with 31.205-16(b).

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to part 31), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) above.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 31.205-42(e).

[48 FR 42301, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 61 FR 69288, Dec. 31, 1996; 68 FR 69248, Dec. 11, 2003; 70 FR 33676, June 8, 2005; 77 FR 203, Jan. 3, 2012]

CFR data is current as of December 10, 2015

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

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

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

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

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

#### 1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Withholding

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

## 3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

#### 4. Apprentices and trainees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**10. Certification of eligibility.**

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

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

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

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

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

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

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

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

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

## VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

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

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

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

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

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## 13. FHWA Form 1273

The City of Miami Springs complies and references Executive Order 11246. The Office of Federal Contract Compliance Programs, U.S. Department of Labor has the exclusive authority to determine compliance with Executive Order 11246 and its regulations for implementation.

### **Limits on Federal Participation:**

Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the City of Miami Springs to proceed with the project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the City of Miami Springs determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the City of Miami Springs shall notify the Contractor in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the City of Miami Springs may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for federal reimbursement for which the City of Miami Springs has advanced payment, the Contractor shall promptly reimburse the City of Miami Springs for all such amounts within 90 days of written notice.

### **REQUIREMENTS FOR FEDERAL JOBS – COMPLIANCE WITH FHWA 1273. (REV 7-16-12) (FA 8-2-12) (1-13)**

SUBARTICLE 7-1.1 (Pages 55 - 56) is expanded by the following:

The FHWA-1273 Electronic version, dated May 1, 2012 is posted on the Department's website at the following URL address

<http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/FHWA1273.pdf> .

Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids. Comply with the provisions contained in FHWA-1273. In addition to the requirements of Section IV, No. 3(a), include gender and race in the weekly annotated payroll records. If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

## 14. FOREIGN CONTRACTOR AND SUPPLIER RESTRICTION

### Reference:

- 49 CFR 30

### TITLE 49--TRANSPORTATION

Subtitle A--Office of the Secretary of Transportation

### PART 30-DENIAL OF PUBLIC WORKS CONTRACTS TO SUPPLIERS OF GOODS AND SERVICES OF COUNTRIES THAT DENY PROCUREMENT MARKET ACCESS TO U.S. CONTRACTORS—

Sec. 30.15 Restrictions on Federal public works projects.

The contracting officer shall insert the following clause in solicitations and contracts as prescribed at Sec. 30.11(a) through (b) of this part:

#### Restrictions on Federal Public Works Projects

(a) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9

(b) General. This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law No. 100-223.

(c) Restrictions. The Contractor shall not knowingly enter into any subcontract under this contract:

(1) With a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or

(2) for the supply of any product for use on the Federal Public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(d) Certification. The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., unless the contractor has knowledge that the certification is erroneous.

(e) Erroneous certification. The certification in paragraph (b) of the provision entitled "Restriction on Federal Public Works Projects--Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may cancel this contract for default at no cost to the Government.

(f) Cancellation. Unless the restrictions of this clause are waived as provided in paragraph

(e) of the provision entitled "Restriction on Federal Public Works Projects--Certification," if the Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms

published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contracting Officer may cancel this contract for default, at no cost to the Government.

(g) Subcontracts. The Contractor shall incorporate this clause, without modification, including this paragraph (g) in all solicitations and subcontracts under this contract:

#### Certification Regarding Restrictions on Federal Public Works Projects-Subcontractors

(1) The Offeror/Contractor, by submission of an offer and/or execution of a contract certifies that the Offeror/Contractor is (i) not an Offeror/Contractor owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001

(2) The Offeror shall provide immediate written notice to the Contractor if, at any time, the Offeror learns that its certification was erroneous by reason of changed circumstances.

(3) The Contractor shall not knowingly enter into any subcontract under this contract:

(i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or

(ii) for the supply of any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

(4) Unless the restrictions of this clause have been waived under the contract for the Federal public works project, if a contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the Government.

(5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.

(6) The certification in paragraph (g)(1) of this clause is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this subcontract at no cost to the Government.

(7) The Contractor agrees to insert this clause, without modification, including this paragraph, in all solicitations and subcontracts under this clause.

# 15. INCENTIVE/DISINCENTIVE CLAUSES

## References:

- 23 CFR 635.127 (d,f)
- FDOT CPAM 1.2.7

CFR data is current as of December 10, 2015

Title 23: Highways

## **PART 635—CONSTRUCTION AND MAINTENANCE**

### Subpart A—Contract Procedures

§635.127 Agreement provisions regarding overruns in contract time.

(d) In addition to the liquidated damages provisions, the STD may also include incentive/disincentive for early completion provisions in the contract. The incentive/disincentive amounts shall be shown separately from the liquidated damages amounts.

(f) When provisions for incentive/disincentive for early completion are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor shall be added to the federally participating contract construction cost before calculating the Federal share. When the disincentive provision is applicable, a proportion of the amount assessed the contractor shall be deducted from the federally participating contract construction cost before the Federal share calculation. Proportions are to be calculated in the same manner as set forth in paragraph (e)(1) of this section.

[52 FR 31390, Aug. 20, 1987. Redesignated at 62 FR 6872, Feb. 14, 1997]

### **FDOT CPAM Section 1.2.7 Incentive/Disincentive:**

**Incentive/Disincentive:** The total “incentive payment” or “disincentive deduction” is a dollar per day amount which the contractor will be entitled to or charged based upon the accrued amount multiplied by the time (calendar days) established in the contract for the contractor to complete a specified activity or to complete the project. The time begins with the first chargeable day and ends with the completion of the project or the specified activity or milestone.

### **1.2.7 Initiating Specifications/Alternative Contracting Techniques**

#### **(a) District Level Responsibilities**

The first step in setting duration for a contract is to determine if any special provisions apply. Establishing the contract duration requires familiarity with the project specifications and may require the addition of other specifications. Make sure these do not conflict with Department objectives or with local ordinances.

**NOTE:** Any contract utilizing the special provision(s) shown below such as; Flextime, Incentive/Disincentive, No Excuse Bonus, A+B, Lane Rental, and Liquidated Savings shall be pre-approved by the appropriate authority as detailed in the Usage Notes on the applicable Specifications Workbook.

Examples of these are:

### **1. Flextime**

Flextime start time is a contracting method intended to minimize disruption to the public. The contractor can use this additional time to mobilize sub-contractors, to coordinate with utilities, to submit shop drawings, to acquire material and equipment, and maximize all resources for the project. Flextime should also be used in cases where material procurement will dictate the start or finish of a project. Project duration for flextime projects can be minimized as a result of the opportunity for efficiency in building the project.

Flextime is meant to be used on minor projects where the extra time allowed to the contractor will result in reduced impact to the traveling public. If flextime is used, general time added to the contract duration should be eliminated, meaning that of normal schedules such as 8am-5pm, Monday – Friday (normal 5 (five) day work week). On a flextime job, contract time for utility conflicts should be included in the contract duration only if the utilities cannot relocate during the flextime period. The contractor must know by specification requirement what utility relocation must occur during flextime.

Flextime should not be used if its use will negatively affect the health, safety, or welfare of the public or an early completion date for a project critical to the Department's work program. Flextime should not be used if the physical condition or capacity problems that will be improved by the project need to be addressed immediately. On projects that would be inspected by consultant firms, consideration should be given to the impact of the flex-time on the consultant staffing and any price considerations.

The District Scheduling Engineer initiates the request to include a flextime contract provision with consultation with the Resident Engineer and the District Specifications Office.

The flextime period shall not exceed 120 days, unless otherwise approved by the Chief Engineer.

### **2. Special Working Hours & Periods**

The District Scheduling Engineer shall coordinate the establishment of any restriction of working hours and periods of time with the District Traffic Operations Office and the Resident/Operations Office that will administer the construction contract. The District Scheduling Engineer will also coordinate with the District Specifications Office.

### **3. Special Events**

The District Scheduling Engineer should seek the input of the Resident Office that will administer the construction contract and the Public Information Office regarding any special events that may impact the project. The District Scheduling Engineer should coordinate with Design Project Manager to identify Special Events which may restrict any or

all contract operations and list such Special Events in the Contract Plans or in the Request for Proposal on Design-Build projects.

#### **4. Schedule**

The District Scheduling Engineer will determine the type of scheduling to be required for each specific project; e.g., bar charts, **CPM**, etc., and coordinate with the District Specifications Office to include the correct Special Provisions to require this type of schedule. A bar chart is allowed to be used only for the smallest projects (i.e., under \$1 million), however, **CPM** schedules are encouraged. **CPM** schedules are required for large and complex projects; e.g., those over \$5 million, urban projects with three (3) or more traffic phases or others deemed appropriate such as alternative contracting projects, buildings, Variable Message Sign(s), etc. **CPM** schedules are not required but are encouraged on simple projects such as 3R (Resurfacing, Rehabilitation, Restoration) or minor bridges, unless there are unusual conditions.

#### **5. Compressed Time or Time Priority**

The District Secretary or his delegate initiates and approves a list of time priority projects. This determination should be made early so that it will influence the design of the project and the times negotiated on the utility relocation agreements. Placement on the list of time priority projects will be considered in the establishment of the project duration and the coordination with the District Specifications Office.

#### **6. Incentive/Disincentive**

One of the most important considerations for justifying the use of an Incentive/Disincentive (I/D) provision is whether payment for early completion of the project or portion of the project is cost beneficial to the traveling public. This means that if the project is completed in a timely manner there will be limited disruptive effects, due to the construction project providing substantial safety, health and welfare to the traveling public. The I/D monetary amount set for a selected project shall be supported by an estimated cost of damages expected to be mitigated by early completion of the overall project or critical phase of work.

The amount of such I/D payment or such additional damages shall be established in the contract based on an analysis of the cost savings to the traveling public or revenue projections for a revenue-producing project. This determination of whether to use an I/D provision is made when developing the daily amount of I/D payment. This analysis may be done by using the departments model software and may be verified if there is a need by an approved process such as "QUEWZ-98", FHWA approved "Quickzone", ADOT model, software to calculate the daily I/D amount. The District level shall be responsible to determine if the use of these software packages or an equivalent process will be a reasonable representative cost analysis and shall be pre-approved by the State Construction Office. Detailed calculations must be maintained and available for any further analysis. Further guidelines for calculating the cost may be found in AASHTO's (*Red Book*) "*Manual on User Benefit Analysis*". If the per day amount exceeds \$50,000 then that amount will require approval by the Director, Office of Construction.

The beginning and ending dates (calendar day or contract date) for which the I/D applies must be clearly identified in the special provisions. The project schedule should clearly show the beginning and ending milestone dates for I/D work. If the I/D clause applies to the complete contract then this should be stated in a special provision and shown on the

contractor's schedule. Contract work items or any portion of the contract work items that are to be considered for I/D must be identified.

There are two other special provisions to consider for I/D provisions. Lane Rental and A + B Bidding allow for I/D payments or deductions. This incentive payment or disincentive deduction shall not exceed the dollar amount established in the provision. The total allowable number of Lane Rental Days is determined by the Engineer.

If the Contractor uses less Lane Rental Days than allowed then the Department will pay an incentive at an established amount in the contract. If the Contractor uses more Lane Rental Days than allowed, the Department will make a disincentive deduction established in the provision. A+B Bidding incentive payment or disincentive deduction shall be an established amount set in the provisions and will be based on original contract time.

There may be a re-evaluation of the incentive/disincentive amount if the contract amount changes from the original estimate or if the scope of work changes. You should be sure to review the incentive/disincentive amounts and make the appropriate adjustments. Also retain any documentation created to reflect these changes.

Each "Plans to Tallahassee" package for projects containing I/D provisions shall include a calculation sheet, attached to the District's recommendation for construction contract time, which documents the basis for the incentive/disincentive provisions. Impact cost estimates are to be included whenever it is feasible to calculate their value. In other words, the I/D and the monetary amount is set based on the Road User Cost to determine the damages or cost savings to the traveling public. This documentation shall be kept in the project file.

Projects containing the I/D Special Provision and which are Federal Aid participating shall have a copy of the justification sheet/s (back-up documentation) included with the contract documents for FHWA approval. The "justification sheet/s" should include several factors such as Daily Road User Cost, Accident Rates, CEI Cost, Maintenance Cost and other justifications such as impacts to community services or access to residential or business areas during construction.

When the Specifications Office preparing the project specifications reviews the project specification package, jobs with an I/D special provision must be identified. This will be detailed on the Transmittal of Plans, Specifications and Estimates Package sheet. (see *PPM Volume I, Chapter 20, Exhibit 20-A*)

After the letting and the contract is being processed for award, the Contracts Administration Office shall make an I/D notation on the "Availability of Funds" memorandum which is sent to the Office of Comptroller, Contract Funds Management Section. The I/D notation shall include the maximum number of allowable dollars (\$). The Office of Comptroller, Contract Funds Management Section will encumber an amount that includes the awarded construction cost and the maximum amount of the incentive cost that can be charged to the contract.

On those projects containing the I/D Special Provision, which are Federal Aid oversight, prior to issuing payments to the contractor for any portion or the full I/D amount, FHWA approval must be obtained.

**Adjusting contract time during the I/D phase defeats the purpose of an I/D clause, and is not allowed.**

#### **7. No Excuse Bonus**

No Excuse Bonuses should be used only on projects that have the highest levels of impact on abutting businesses and the traveling public. A designation Level of Community Awareness 4 is a prerequisite. The No Excuse Bonus concept can be used to achieve particular milestones or for total project completion by a certain contract day or a specified date. The Scheduling Engineer must provide a maximum number of days and set the bonus date based on calendar date or an actual contract day.

Projects containing the No Excuse Special Provision and which are Federal Aid participating shall have a copy of the justification sheet/s (back-up documentation) included with the contract documents for FHWA approval. The "justification sheet/s" should include several factors such as Daily Road User Cost, Accident Rates, CEI Cost, Maintenance Cost and other justifications such as impacts to community services or access to residential or business areas during construction.

On those projects containing the No Excuse Special Provision, which are Federal Aid oversight, prior to issuing payments to the contractor for any portion or the full I/D amount, FHWA approval must be obtained.

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#### **8. Time plus Money (A+B)**

This provision is used on projects that may have a significant level of community impact, Level of *Community Awareness* 3. Bidding Time plus Money provides the potential for decreasing contract time. A dollar per day figure must be calculated by the Department and included in the bid documents. A maximum number of days the contractor may bid must be provided.

#### **9. Lane Rental**

Use Lane Rental to minimize lane closures. Lane rental should be used where lane closures will severely inconvenience the traveling public, (for example, on Interstates, ramps, urban arterials, etc). Maximum daily lane rental fee shall be established in the contract based on an analysis of the cost savings to the traveling public or revenue projections for a revenue-producing project. The dollar value of each lane rental day is established by the Department and included in the bid documents. Since the intent is to reduce lane closures, project duration should be calculated normally.

Projects containing the Lane Rental Special Provision and which are Federal Aid participating shall have a copy of the justification sheet/s (back-up documentation) included with the contract documents for FHWA approval. The "justification sheet/s" should include several factors such as Daily Road User Cost, Accident Rates, CEI Cost, Maintenance Cost and

other justifications such as impacts to community services or access to residential or business areas during construction.

On those projects containing the Lane Rental Special Provision, which are Federal Aid oversight, prior to issuing payments to the contractor for any portion or the full I/D amount, FHWA approval must be obtained.

#### **10. Liquidated Savings**

The contractor will be rewarded for each calendar day the contract is completed and accepted prior to the expiration of the allowable contract time. The daily amount of liquidated savings should be equal to the liquidated damages.

Projects containing the Liquidated Savings Special Provision and which are Federal Aid participating shall have a copy of the justification sheet/s (back-up documentation) included with the contract documents for FHWA approval. The "justification sheet/s" should include several factors such as Daily Road User Cost, Accident Rates, CEI Cost, Maintenance Cost and other justifications such as impacts to community services or access to residential or business areas during construction.

On those projects containing the Liquidated Savings Special Provision, which are Federal Aid oversight, prior to issuing payments to the contractor for any portion or the full I/D amount, FHWA approval must be obtained.

#### **11. Damage Recovery and ITS Damage Recovery**

This provision is similar to Lane Rental provisions to assess a fee to the Contractor for not having all lanes open to traffic at a designated time as defined in the Traffic Control Plans. The dollar values are set for the first 30 minutes with proportional fees for each additional 30 minutes with a cap on the cost not to exceed a set amount within the 24 hour period. The dollar value of each assessment is established by the Department and included in the bid documents. These fees may be calculated using the Department's Road User Cost program.

The ITS Damage Recovery is also similar to Lane Rental provisions that assess a fee to the Contractor for not restoring Department ITS and related components in a designated time as defined within this Special Provision. The dollar values are set for the first 30 minutes with proportional fees for each additional 30 minutes with a cap on the cost not to exceed a set amount within the 24 hour period. The dollar value of each assessment is established by the Department and included in the bid documents. These fees may be calculated using the Department's Road User Cost program.

#### **12. Streamline Contracts**

Streamline Contracts will be contracts that are less than \$2,000,000 dollars with less than 2,000 tons of asphalt. There are two types of these contracts, 1.) Streamline Plan Quantity and 2.) Streamline Lump Sum. These are similar to the conventional Plan Quantity and Lump Sum projects with the exception of simplifying the administration of the contract. (See *Section 5.15.3* of this *Manual* for additional information).

There may be exceptions to the use of Streamline Contracting, such as any project where the scope of work cannot be clearly defined in the contract documents that may have unknown variables such as, spalled areas on a bridge repair project or concrete rehabilitation project. Any exceptions shall be authorized by the DCE and noted on the Contract Time Memo.

### **13. Special Notices/Directions to Contractor**

- (A) Inform contractor if contract time is reduced from normal.
- (B) Inform contractor if additional contract time is supplied for anticipated utility conflicts.
- (C) Direct contractor to begin project by a specific day.
- (D) Inform contractor if work by others will be underway at either end or within the project limits, contractor will coordinate with other contractors. Include proper Special Provision with the contract.

## 16. INDIAN PREFERENCE ON FEDERAL-AID PROJECTS (LABOR AND EMPLOYMENT)

### References:

- 23 CFR 635.117
- FHWA Notice 4720.7, *Indian Preference In Employment On Federal-Aid Highway Projects On And Near Indian Reservations*, March 15, 1993

### **§ 635.117 Labor and employment.**

CFR data is current as of December 10, 2015

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

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

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

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

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

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

# 17. LIQUIDATED DAMAGES

**References:**

- 23 CFR635.127
- FDOT Standard Specifications 8-10.2

*From Section 8 (Subletting, Contract Time Extensions, and Liquidated Damages):*

**8-10 Liquidated Damages for Failure to Complete the Work.**

**8-10.2 Amount of Liquidated Damages:** Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge Per Calendar Day
\$50,000 and under .....	\$763
Over \$50,000 but less than \$250,000.....	\$958
\$250,000 but less than \$500,000 .....	\$1,099
\$500,000 but less than \$2,500,000 .....	\$1,584
\$2,500,000 but less than \$5,000,000 .....	\$2,811
\$5,000,000 but less than \$10,000,000 .....	\$3,645
\$10,000,000 but less than \$15,000,000 .....	\$4,217
\$15,000,000 but less than \$20,000,000 .....	\$4,698
\$20,000,000 and over.... ..	\$6,323 plus 0.00005 of any amount over \$20 million (Round to nearest whole dollar)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES  
ON FEDERAL-AID CONTRACTS  
(Compliance with 49CFR, Section 20.100 (b))**

375-030-33  
PROCUREMENT  
10/01

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

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

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. (Standard Form-LLL can be obtained from the Florida Department of Transportation's Professional Services Administrator or Procurement Office.)

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

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

Name of Consultant: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DISCLOSURE OF LOBBYING ACTIVITIES**

375-030-34  
 PROCUREMENT  
 04/14

<b>1. Type of Federal Action:</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing b. material change <b>For Material Change Only:</b> Year: _____ Quarter: _____ Date of last report: _____ (mm/dd/yyyy)
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : _____ _____ _____ Congressional District, <i>if known</i> : 4c _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b> _____ _____ _____ Congressional District, <i>if known</i> : _____	
<b>6. Federal Department/Agency:</b> _____ _____	<b>7. Federal Program Name/Description:</b> _____ _____ CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i> _____ _____ _____	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> _____ _____ _____	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date (mm/dd/yyyy): _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the fullname, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10.
  - (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
  - (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## 19. LOCAL/STATE HIRING PREFERENCE

References:

- 23 CFR 635.117
- 255.0991 F.S.

**No local Preference rule regulation, policy or ordinance provision will be considered or used in awarding this Contract.**

## 20. METHOD OF CONSTRUCTION (OR METHOD OF BIDDING)

### References:

- 23 CFR 635.104
- 23 CFR 114(a)

### **§635.114 Award of contract and concurrence in award.**

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the STD in accordance with §635.110. Award shall be within the time established by the STD and subject to the prior concurrence of the Division Administrator.

(b) The STD shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the STD shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the STD's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a STD decision not to award the contract. If, however, the STD decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the STD determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the STD rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

(h) Any proposal by the STD to reject all bids received for a Federal-aid contract shall be submitted to the Division Administrator for concurrence, accompanied by adequate justification.

(i) In the event the low bidder selected by the STD for contract award forfeits the bid guarantee, the STD may dispose of the amounts of such forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the STD and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

(k) In the case of a design-build project, the following requirements apply: Design-build contracts shall be awarded in accordance with the Request for Proposals document. See 23 CFR Part 636, Design-build Contracting, for details.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**NON-COLLUSION DECLARATION AND  
COMPLIANCE WITH 49 CFR § 29**

575-060-13  
RIGHT OF WAY  
05/01  
Page 1 of 4

ITEM/SEGMENT NO.: \_\_\_\_\_  
F.A.P. NO.: \_\_\_\_\_  
MANAGING DISTRICT: \_\_\_\_\_  
PARCEL NO.: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_  
BID LETTING OF: \_\_\_\_\_

I, \_\_\_\_\_, hereby declare that I am  
(NAME)  
\_\_\_\_\_ of \_\_\_\_\_  
(TITLE) (FIRM)  
of \_\_\_\_\_  
(CITY AND STATE)

and that I am the person responsible within my firm for the final decision as to the price(s) and amount of this Bid on this State Project.

I further declare that:

1. The prices(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be so disclosed prior to the bid opening.
3. No attempt has been made or will be made to solicit, cause or induce any other firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this Declaration.
8. As required by Section 337.165, Florida Statutes, the firm has fully informed the Department of Transportation in writing of all convictions of the firm, its affiliates (as defined in Section 337.165(1)(a), Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract or for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees of the firm or affiliates who were convicted of contract crimes while in the employ of another company.

9. I certify that, except as noted below, neither my firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of Federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR §29.110(a), by any Federal department or agency;

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

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

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

10. I(We), certify that I(We), shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract by any Federal Agency unless authorized by the Department.

Where I am unable to declare or certify as to any of the statements contained in the above stated paragraphs numbered (1) through (10), I have provided an explanation in the "Exceptions" portion below or by attached separate sheet.

EXCEPTIONS:

(Any exception listed above will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate to whom it applies, initiating agency and dates of agency action. Providing false information may result in criminal prosecution and/or administrative sanctions.)

I declare under penalty of perjury that the foregoing is true and correct.

CONTRACTOR: \_\_\_\_\_ (Seal)

BY: \_\_\_\_\_  
NAME AND TITLE PRINTED

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_  
SIGNATURE

WITNESS: \_\_\_\_\_

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**FAILURE TO FULLY COMPLETE AND EXECUTE THIS DOCUMENT  
MAY RESULT IN THE BID BEING DECLARED NONRESPONSIVE**

## REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors and other lower tier participants.

- Appendix B of 49 CFR Part 29 –

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

### *Instructions for Certification*

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

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

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

## 22. ON THE JOB TRAINING

### References:

- 23 CFR 230
- FDOT Standard Specifications 7-25

From Section 7 (FHWA 1273, Wage Rates, E-Verify, Title VI, DBE, and On-The-Job Training):

### 7-25 On-The-Job Training Requirements.

As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide On-The-Job Training aimed at developing full journeymen in the type of trade or job classification involved in the work. In the event the Contractor subcontracts a portion of the contract work, it shall determine how many, if any, of the trainees are to be trained by the subcontractor provided, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Section. Ensure that, when feasible, 25% of trainees in each occupation are in their first year of training. The Contractor shall incorporate the requirements of this Section into such subcontract.

The number of trainees will be estimated on the number of calendar days of the contract, the dollar value, and the scope of work to be performed. The trainee goal will be finalized at a Post-Preconstruction Trainee Evaluation Meeting and the goal will be distributed among the work classifications based on the following criteria:

1. Determine the number of trainees on Federal Aid Contract:

a. No trainees will be required for contracts with a Contract Time allowance of less than 275 calendar days.

b. If the Contract Time allowance is 275 calendar days or more, the number of trainees shall be established in accordance with the following chart:

Estimated Contract Amount	Trainees Required
\$2,000,000 or less	0
Over \$2,000,000 to \$4,000,000	2
Over \$4,000,000 to \$6,000,000	3
Over \$6,000,000 to \$12,000,000	5
Over \$12,000,000 to \$18,000,000	7

Estimated Contract Amount	Trainees Required
Over \$18,000,000 to \$24,000,000	9
Over \$24,000,000 to \$31,000,000	12
Over \$31,000,000 to \$37,000,000	13
Over \$37,000,000 to \$43,000,000	14
Over \$43,000,000 to \$49,000,000	15
Over \$49,000,000 to \$55,000,000	16
Over \$55,000,000 to \$62,000,000	17
Over \$62,000,000 to \$68,000,000	18
Over \$68,000,000 to \$74,000,000	19
Over \$74,000,000 to \$81,000,000	20
Over \$81,000,000 to \$87,000,000	21
Over \$87,000,000 to \$93,000,000	22
Over \$93,000,000 to \$99,000,000	23
Over \$99,000,000 to \$105,000,000	24
Over \$105,000,000 to \$112,000,000	25
Over \$112,000,000 to \$118,000,000	26
Over \$118,000,000 to \$124,000,000	27
Over \$124,000,000 to \$130,000,000	28
Over \$130,000,000 to *	
*One additional trainee per \$6,000,000 of estimated Construction Contract amount over \$130,000,000	

Further, if the Contractor or subcontractor requests to utilize banked trainees as discussed later in this Section, a Banking Certificate will be validated at this meeting allowing credit to the Contractor for previously banked trainees. Banked credits of prime Contractors working as Subcontractors may be accepted for credit. The Contractor's Project Manager, the

Construction Project Engineer and the Department's District Contract Compliance Manager will attend this meeting. Within ten days after the Post-Preconstruction Training Evaluation Meeting, the Contractor shall submit to the Department for approval an On-The-Job Training Schedule indicating the number of trainees to be trained in each selected classification and the portion of the Contract Time during which training of each trainee is to take place. This schedule may be subject to change if any of the following occur:

1. When a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
2. When there is a change in previously approved classifications;
3. When replacement trainees are added due to voluntary or involuntary termination

The revised schedule will be resubmitted to and approved by the Department's District Contract Compliance Manager.

The following criteria will be used in determining whether or not the Contractor has complied with this Section as it relates to the number of trainees to be trained:

1. Credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on this Contract. Credit for trainees, over the established number for this Contract, will be carried in a "bank" for the Contractor and credit will be allowed for those surplus trainees in subsequent, applicable projects. A "banked" trainee is described as an employee who has been trained on a project, over and above the established goal, and for which the Contractor desires to preserve credit for utilization on a subsequent project.

2. Credit will be allowed for each trainee that has been previously enrolled in the Department's approved training program on another contract and continues training in the same job classification and completes their training on a different contract.

3. Credit will be allowed for each trainee who, due to the amount of work available in their classification, is given the greatest practical amount of training on the contract regardless of whether or not the trainee completes training.

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

5. No credit will be allowed for a trainee whose employment by the Contractor is involuntarily terminated unless the Contractor can clearly demonstrate good cause for this action.

Training and upgrading of minorities, women and economically disadvantaged persons toward journeyman status is a primary objective of this Section. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic

and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. If a non-minority male is enrolled into the On-The-Job Training Program, the On-The-Job Training Notification of Personnel Action Form notifying the District Contract Compliance Manager of such action shall be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department's District Contract Compliance Manager. The Contractor will be given an opportunity and will be responsible for demonstrating the steps that it has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Section. This training is not intended, and shall not be used, to discriminate against any applicant for training, whether a minority, woman or disadvantaged person.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status, or have been employed as a journeyman. The Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of a Proficiency Demonstration set up at the completion of training and established for the specific training classification, completion of the minimum hours in a training classification range, and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Contract Compliance Office:

1. Trainee Enrollment and Personnel Action Form
2. Proficiency Demonstration Verification Form indicating completion of each standard established for the classification signed by representatives of both the Contractor and the Department.

The Department and the Contractor shall establish a program that is tied to the scope of the work in the project and the length of operations providing it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classifications concerned, by at least, the minimum hours prescribed for a training classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal Aid

highway construction contract. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work on the classifications covered by the program.

A voluntary On-The-Job Training Program is available to a Contractor which has been awarded a state funded project. Through this program, the Contractor will have the option to train employees on state funded projects for "banked credit" as discussed previously in this provision, to be utilized on subsequent Federal Aid Projects where training is required. Those Contractors availing themselves of this opportunity to train personnel on state funded projects and bank trainee hours for credit shall comply with all training criteria set forth in this Section for Federal Aid Projects; voluntary banking may be denied by the Department if staff is not available to monitor compliance with the training criteria.

It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial type positions. Training is permissible in lower level management positions such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classifications, except Common/General Laborer, may be permitted provided that significant and meaningful training is provided and approved by the District Contract Compliance Office.

When approved in advance by the District Contract Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current contract or a Contractor will be allowed to bank trainees who have successfully completed a training program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Contract Compliance Manager. This credit will be given even though the Contractor may receive training program funds from other sources, provided such other source do not specifically prohibit the Contractor from receiving other form of compensation. Offsite training is permissible as long as the training is an integral part of an approved training program and does not compromise a significant part of the overall training. Credit for offsite training indicated above may only be made to the Contractor when it does one or more of the following and the trainees are concurrently employed on a Federal Aid Project:

1. Contributes to the cost of the training,
2. Provides the instruction to the trainee,
3. Pays the trainee's wages during the offsite training period.

The Contractor shall compensate the trainee at no less than the laborer rate established in the Contract at the onset of training. The compensation rate will be increased to the journeyman's wage upon graduation from the training program for the remainder of the time the trainee works in the classification in which they were trained.

The Contractor shall furnish the trainee a copy of the program they will follow in providing the training. The Contractor shall provide each trainee with a certification showing

the type and length of training satisfactorily completed. The Contractor shall enroll a trainee in one training classification at a time to completion before the trainee can be enrolled in another classification on the same project.

The Contractor shall maintain records to document the actual hours each trainee is engaged in training on work being performed as a part of this Contract.

The Contractor shall submit to the District Contract Compliance Manager a copy of an On-The-Job Training Notification of Personnel Action form no later than seven days after the effective date of the action when the following actions occur: a trainee is transferred on the project, transferred from the project to continue training on another contract, completes training, is upgraded to journeyman status or voluntarily terminates or is involuntary terminated from the project.

The Contractor shall furnish to the District Contract Compliance Manager a copy of a Monthly Time Report for each trainee. The Monthly Time Report for each month shall be submitted no later than the tenth day of the subsequent month. The Monthly Time Report shall indicate the phases and sub-phases of the number of hours devoted to each proficiency.

Highway or Bridge Carpenter Helper, Mechanic Helper, Rodman/Chainman, and Timekeeper classifications will not be approved for the On-The-Job Training Program.

The number of trainees may be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

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

## 23. OWNER FORCE ACCOUNT/COST-EFFECTIVE JUSTIFICATION

### References:

- 23 CFR 635.205 (b) under 635.205

**Owner Force Account contracting is not allowed.**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**PROPRIETARY PRODUCT CERTIFICATION**

630-020-07  
PROGRAM MANAGEMENT  
08/14

To: \_\_\_\_\_  
Design Engineer

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

Financial Project ID: \_\_\_\_\_ New Const.  RRR   
Federal Aid Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
State Road Number: \_\_\_\_\_ Co. / Sec. / Sub.: \_\_\_\_\_  
Begin Project MP: \_\_\_\_\_ End Project MP: \_\_\_\_\_  
Full Federal Oversight: No  Yes  Note: If Yes, submit to FHWA Director.

A justification and all supporting documents must be attached to this document.  
Mark the appropriate certification:

"I, \_\_\_\_\_, \_\_\_\_\_, of the \_\_\_\_\_,  
*Print Name of Initiator Position Title Name of Agency*

do hereby certify that in accordance with the requirements of 23 CFR 635.411(a)(2),  
Mark appropriately (choose only one option):

- that this patented or proprietary item is essential for synchronization with existing highway facilities.  
 that no equally suitable alternative exists for this patented or proprietary item."

\_\_\_\_\_, \_\_\_\_\_  
*Signature Date*

**For Department Use Only**

"I, \_\_\_\_\_, \_\_\_\_\_,  
*Print Name Position Title*

of the Florida Department of Transportation, do hereby approve this certification request made in accordance with the  
requirements of 23 CFR 635.411(a)(2),  
Mark appropriately (choose only one option):

- that this patented or proprietary item is essential for synchronization with existing highway facilities.  
 that no equally suitable alternative exists for this patented or proprietary item."

Identify any conditions and limitations:

\_\_\_\_\_, \_\_\_\_\_  
*Signature Date*

## 25. PREQUALIFICATION

### References:

- 23 CFR 635.110
- 337.14 F.S.
- Chapter 14-22, F.A.C

FDOT prequalified contractor is not required on NHS or SHS projects with a contract value under \$250,000. Non SHS/NHS projects may use Local Agency prequalified contractors. Local Agency must use consistent qualifications and application of standards.

### **§635.110 Licensing and qualification of contractors.**

(a) The procedures and requirements a STD proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29 or otherwise determined to be ineligible, shall be prohibited from participating in the Federal-aid highway program.

(f) In the case of a design-build project, the STDs may use their own bonding, insurance, licensing, qualification or prequalification procedure for any phase of design-build procurement.

(1) The STDs may not impose statutory or administrative requirements which provide an in-State or local geographical preference in the solicitation, licensing, qualification, pre-qualification, short listing or selection process. The geographic location of a firm's office may not

be one of the selection criteria. However, the STDs may require the successful design-builder to establish a local office after the award of contract.

(2) If required by State statute, local statute, or administrative policy, the STDs may require prequalification for construction contractors. The STDs may require offerors to demonstrate the ability of their engineering staff to become licensed in that State as a condition of responsiveness; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals. The STDs may require compliance with appropriate State or local licensing practices as a condition of contract award.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

## 26. PREVAILING MINIMUM WAGE

### References:

- 23 USC 113
- 23 CFR 633A
- FDOT SP0071600

Current wage table may be obtained at: <http://www.dot.state.fl.us/construction/wage.shtm> or <http://www.wdol.gov>

*From Section 7 (FHWA 1273, Wage Rates, E-Verify, Title VI, DBE, and On-The-Job Training):*

### **7-16 Wage Rates for Federal-Aid Projects.**

For this Contract, payment of predetermined minimum wages applies.

The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) **FL160221 01/08/2016 FL221**, 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.

For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department's Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with 2-4.

Contact the Department's Prevailing Wage Rate Coordinator at (850) 414-4688 if the Department's website cannot be accessed or there are questions.

# DAVIS-BACON PREVAILING WAGE CHART

General Decision Number: FL160221 01/08/2016 FL221

Superseded General Decision Number: FL20150221

State: Florida

Construction Type: Highway

County: Miami-Dade County in Florida.

## HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the 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 \$10.15 (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 2016. The EO minimum wage rate will be adjusted annually. 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  
0

Publication Date  
01/08/2016

\* ELEC0349-002 09/01/2014

	Rates	Fringes
ELECTRICIAN.....	\$ 30.11	10.06

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SUFL2013-039 08/19/2013

	Rates	Fringes
CARPENTER.....	\$ 17.84	0.00
CEMENT MASON/CONCRETE FINISHER, Includes Form Work.....	\$ 15.49	0.00
FENCE ERECTOR.....	\$ 12.82	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 15.07	0.00

HIGHWAY/PARKING LOT STRIPING: Painter.....	\$ 12.13	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Spray Nozzleman).....	\$ 11.16	0.00
INSTALLER - GUARDRAIL.....	\$ 13.43	0.00
IRONWORKER, ORNAMENTAL.....	\$ 13.48	0.00
IRONWORKER, REINFORCING.....	\$ 18.43	0.00
IRONWORKER, STRUCTURAL.....	\$ 16.42	0.00
LABORER (Traffic Control Specialist incl. placing of cones/barricades/barrels - Setter, Mover, Sweeper).....	\$ 11.59	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 12.31	0.00
LABORER: Common or General.....	\$ 10.69	0.00
LABORER: Flagger.....	\$ 12.53	0.00
LABORER: Grade Checker.....	\$ 12.41	0.00
LABORER: Landscape & Irrigation.....	\$ 9.02	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 13.91	3.50
LABORER: Pipelayer.....	\$ 15.02	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 16.24	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 12.88	0.00
OPERATOR: Boom.....	\$ 18.95	0.00
OPERATOR: Boring Machine.....	\$ 15.29	0.00
OPERATOR: Broom/Sweeper.....	\$ 13.01	0.00

OPERATOR: Bulldozer.....	\$ 16.77	0.00
OPERATOR: Concrete Finishing Machine.....	\$ 15.44	0.00
OPERATOR: Concrete Saw.....	\$ 14.43	0.00
OPERATOR: Crane.....	\$ 22.46	0.00
OPERATOR: Curb Machine.....	\$ 20.74	0.00
OPERATOR: Distributor.....	\$ 13.29	0.00
OPERATOR: Drill.....	\$ 14.78	0.00
OPERATOR: Forklift.....	\$ 16.32	0.00
OPERATOR: Gradall.....	\$ 14.71	0.00
OPERATOR: Grader/Blade.....	\$ 20.22	3.85
OPERATOR: Loader.....	\$ 15.53	0.00
OPERATOR: Mechanic.....	\$ 18.03	0.00
OPERATOR: Milling Machine.....	\$ 14.67	0.00
OPERATOR: Oiler.....	\$ 16.32	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 13.61	0.00
OPERATOR: Piledriver.....	\$ 17.23	0.00
OPERATOR: Post Driver (Guardrail/Fences).....	\$ 14.45	0.00
OPERATOR: Roller.....	\$ 13.67	0.00
OPERATOR: Scraper.....	\$ 12.01	0.00
OPERATOR: Screed.....	\$ 14.15	0.00
OPERATOR: Tractor.....	\$ 12.19	0.00
OPERATOR: Trencher.....	\$ 14.74	0.00
PAINTER: Spray.....	\$ 16.52	0.00

SIGN ERECTOR.....	\$ 12.96	0.00
TRAFFIC SIGNALIZATION: Traffic Signal Installation.....	\$ 19.07	0.00
TRUCK DRIVER: Distributor Truck.....	\$ 14.96	2.17
TRUCK DRIVER: Dump Truck.....	\$ 12.19	0.00
TRUCK DRIVER: Flatbed Truck.....	\$ 14.28	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 15.07	0.00
TRUCK DRIVER: Slurry Truck.....	\$ 11.96	0.00
TRUCK DRIVER: Vactor Truck.....	\$ 14.21	0.00
TRUCK DRIVER: Water Truck.....	\$ 13.17	1.60

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

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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 request 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

## 27. PROGRESS PAYMENTS/ESTIMATES

### References:

- 23 CFR 635.122
- FDOT Standard Specifications 9-5

### FDOT Standard Specifications 9-5

#### 9-5 Partial Payments.

**9-5.1 General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment. The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld. Retainage will not be withheld until the percent of Contract Time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of Contract Time used exceeds the percent of Contract amount earned by more than 15%. Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements. Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

**9-5.2 Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory.

#### 9-5.3 Withholding Payment:

**9-5.3.1 Withholding Payment for Defective Work:** If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**9-5.3.2 Withholding Payment for Failure to Comply:** The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

1. comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job Training,

and Affirmative Action;

2. comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;

3. comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and

4. comply with or make a good faith effort to meet On-The-Job Training goals. The Department will withhold progress payments until the Contractor has satisfied the above conditions.

**9-5.4 Release of Retainage After Acceptance:** When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due and Form 21-A release) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in 9-5.3. The Department will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days. The Department may deduct from payment estimates any sums that the

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

#### **9-5.5 Partial Payments for Delivery of Certain Materials:**

**9-5.5.1 General:** The Department will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used. The following conditions apply to all payments for stockpiled materials:

1. There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
2. The stockpiled material must be approved as meeting applicable specifications.

3. The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
4. The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.
5. Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
6. Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**9-5.5.2 Partial Payment Amounts:** The following partial payment restrictions apply:

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

**9-5.5.3 Off Site Storage:** If the conditions of 9-5.5.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of 9-5.5.1 and the following conditions are met:

1. Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.
2. The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials: "Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement." "Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify,

or otherwise change the Contractor's obligation to furnish the materials described in this agreement to the Florida Department of Transportation."

3. The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

**9-5.6 Certification of Payment to Subcontractors:** The term "subcontractor," as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms 100 working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor's work. Provide this certification in the form designated by the Department. Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period. The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

## 28. PROHIBITION AGAINST CONVICT PRODUCED MATERIALS

### References:

- 23 CFR 635.417
- FDOT Standard Specifications 6-5.1

### 6-5 Products and Source of Supply.

**6-5.1 Source of Supply–Convict Labor (Federal-Aid Contracts Only):** Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987. Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:

1. Materials produced by convicts on parole, supervised release, or probation from a prison or,
2. Materials produced in a qualified prison facility. The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

## 29. PUBLIC AGENCIES IN COMPETITION WITH THE PRIVATE SECTOR

### References:

- 23 CFR 635.112 (e)

**NOT ALLOWED**

## 30. PUBLICLY-OWNED EQUIPMENT

### References:

- 23 CFR 635.106

**NOT ALLOWED**

## 31. SALVAGE CREDITS

### References:

- 49 CFR 18.36

**Salvage credits are Not Allowed.**

## 32. STANDARDIZED CHANGED CONDITIONS CONTRACT CLAUSES

### References:

- 23 CFR 635.109
- FDOT Standard Specifications 4-3 and 5-12

### **4-3 Alteration of Plans or of Character of Work.**

**4-3.1 General:** The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

The term "significant change" applies only when:

1. The Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or

2. A major item of work, as defined in 1-3, is increased in excess of 125% or decreased below 75% of the original Contract quantity. The Department will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity in accordance with 4-3.2 below. In the case of a decrease below 75% the Department will only apply a price adjustment for the additional costs that are a direct result of the reduction in quantity.

In (1) above, the determination by the Engineer shall be conclusive. If the determination is challenged by the Contractor in any proceeding, the Contractor must establish by clear and convincing proof that the determination by the Engineer was without any reasonable basis.

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely provided a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith,

that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

1. Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

At the Pre-construction conference, certify to the Engineer the following:

- a. A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- b. Actual Rate for items listed in Table 4-3.2.1,
- c. Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- d. Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

2. Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

3. Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is

applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

- a. Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.
- b. Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.
- c. Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- d. Standby Rate = Allowable Hourly Equipment Rate x 50%.

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

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

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

4. Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (a) or (b) below:

- a. Solely a mark-up of 17.5% on the payments in (1) through (3), above.

1. Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

2. The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

b. Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the combined total number of calendar days granted as time extensions due to either extra work, excluding overruns to existing contract items, that extend the duration of the project or delay of a controlling work item caused solely by the Department, or the combined total number of calendar days for which a claim of entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined to be in favor of the Contractor.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

**4-3.2.2 Subcontracted Work:** Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:

$$D_s = \frac{A_s \times C}{B}$$

Where  $A_s$  = Original Contract Amount minus Original Subcontract amounts(s)\*

$B$  = Original Contract Time

$C$  = 8%

$D_s$  = Average Overhead Per-Day

\* deduct Original Subcontract Amount(s) of subcontractor(s) performing the work

The subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually provided and paid for separate bond

premiums for such additional or unforeseen work in such amount and that the subcontractor was required by the Contractor to acquire a bond.

The Contractor shall require the subcontractor to provide a certification, in accordance with 4-3.2.1 (1), as part of the cost proposal and provide such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

**4-3.3 No Waiver of Contract:** Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

**4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:** A Supplemental Agreement or Unilateral Payment will be used to clarify the Plans and Specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in the Plans which could not reasonably have been contemplated or foreseen in the original Plans and Specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

**4-3.5 Extra Work:** Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in 4-3.2 for additional work.

**4-3.6 Connections to Existing Pavement, Drives and Walks:** Generally adhere to the limits of construction at the beginning and end of the project as detailed in the Plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated in the Plans, the Engineer will provide direction regarding the proper connections in accordance with the Design Standards.

**4-3.7 Differing Site Conditions:** During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the

Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has provided the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

**4-3.8 Changes Affecting Utilities:** The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, Design Plans (including Traffic Control Plans) or other Contract Documents and which effect a change in utility work different from that shown in the Utility Plans, joint project agreements or utility relocation schedules.

**4-3.9 Cost Savings Initiative Proposal:**

**4-3.9.1 Intent and Objective:**

1. This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Proposal) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. A mandatory Cost Savings Initiative Workshop will be held prior to Contract Time beginning for the Contractor and Department to discuss potential Proposals. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

2. The Department will consider Proposals that would result in net savings to the Department by providing a decrease in the cost of the Contract. Proposals must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. However, nothing herein prohibits the Contractor from submitting Proposals when the required functions and characteristics can be combined, reduced or eliminated because they are nonessential or excessive. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a Proposal.

3. The Department reserves the right to reject at its discretion any Proposal submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending the Department's execution of a formal supplemental agreement

implementing an approved Proposal, the Contractor shall remain obligated to perform the work in accordance with the terms of the existing Contract. The Department may grant time extensions to allow for the time required to develop and review a Proposal.

4. For potential Proposals not discussed at the Cost Savings Initiative Workshop, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal prior to development of the Proposal.

**4-3.9.2 Subcontractors:** The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of Proposals from subcontractors. However, it is not mandatory to submit Proposals to the Department or to accept or transmit subcontractor proposed Proposals to the Department.

**4-3.9.3 Data Requirements:** As a minimum, submit the following information with each Proposal in accordance with 4-1:

1. a description of the difference between the existing Contract requirement, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.

2. separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

3. an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the Proposal if the Department adopts it. Provide preliminary plan drawings sufficient to describe the proposed changes.

4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the Proposal with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with prints of drawings and computations signed and sealed by the Contractor's Engineer of Record and submit in accordance with 4-1. Written documentation or drawings will be provided clearly delineating the responsibility of the Contractor's Engineer of Record.

5. the date by which the Department must approve the Proposal to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

6. a revised project schedule that would be followed upon approval of the Proposal. This schedule would include submittal dates and review time for the Department and Peer reviews.

**4-3.9.4 Processing Procedures:** Submit Proposals to the Engineer or his duly authorized representative in accordance with 4-1. The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The

Department is not liable for any Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a Proposal, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the Proposal, the Department will determine the Contractor's fair share upon the basis of the Proposal as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the Proposal from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the Proposal design.

**4-3.9.5 Computations for Change in Contract Cost of Performance:** If the Proposal is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the Proposal.

The Department will not include its costs to process and implement a Proposal in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a Proposal as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

**4-3.9.6 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges:** A Proposal that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge Plans relating to the Proposal shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purposes of this article as the Independent Review Engineer who is not the originator of the Proposal design, and is pre-qualified by the Department in accordance with Rule 14-75, Florida Administrative Code. The independent peer review is intended to be a comprehensive, thorough verification of the original work, giving assurance that the design is in compliance with all Department requirements. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The Independent Review Engineer shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

The Contractor shall designate a primary engineer responsible for the Proposal design and as such will be designated as the Contractors Engineer of Record for the Proposal design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for design of the entire structure.

New designs and independent peer reviews shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

**4-3.9.7 Sharing Arrangements:** If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and the Department. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal. The reasonable documented engineering costs will be paid by the Department. Engineering costs will be based on the consultant's certified invoice and may include the costs of the Independent Review Engineer in 4-3.9.6. The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor.

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a Proposal:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** The Contractor's Proposal submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's Proposal development, have or may have that are in whole or in part implicated in the Proposal. Such required intellectual property rights notice includes, but is not limited to, disclosure of any issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the Proposal that are already on the Department's Approved Product List (APL) or Design Standard Indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

**4-3.9.8.2 Department's Future Rights to a Proposal:** Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a Proposal, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such Proposal on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4-3.9.8.1, unless the Department has by express written exception in

the Proposal acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

## **5-12 Claims by Contractor.**

**5-12.1 General:** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim. Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

### **5-12.2 Notice of Claim:**

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate. If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9,

without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

**5-12.2.2 Claims For Delay:** Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim. There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(a) and (c), and then only to the extent the Contractor could not reasonably mitigate such idleness.

**5-12.3 Content of Written Claim:** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

- (a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
- (b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;

(c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;

(d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

(e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:

- (1) documented additional job site labor expenses;
- (2) documented additional cost of materials and supplies;
- (3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
- (4) any other additional direct costs or damages and the documents in support thereof;
- (5) any additional indirect costs or damages and all documentation in

(f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence. Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

**5-12.4 Action on Claim:** The Engineer will respond on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per 5-11 of all Contract work by the Department or denial hereunder, whichever occurs last.

**5-12.5 Pre-Settlement and Pre-Judgment Interest:** Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street

Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

#### **5-12.6 Compensation for Extra Work or Delay:**

**5-12.6.1 Compensation for Extra Work:** Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

**5-12.6.2 Compensation for Delay:** Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, supplemental agreements, work orders, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract Time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

**5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay:** For any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

**5-12.7 Mandatory Claim Records:** After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work

or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

**5-12.8 Claims For Acceleration:** The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

**5-12.9 Certificate of Claim:** When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

**5-12.10 Non-Recoverable Items:** The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;
- b. Any claim for other than extra work or delay;
- c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense"; nor
- e. Attorney fees, claims preparation expenses and costs of litigation.

**5-12.11 Exclusive Remedies:** Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

**5-12.12 Settlement Discussions:** The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

**5-12.13 Personal Liability of Public Officials:** In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

**5-12.14 Auditing of Claims:** All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim. Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the

Department's written request for copies provide copies at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
  2. Insurance, welfare and benefits records;
  3. Payroll register;
  4. Earnings records;
  5. Payroll tax return;
  6. Material invoices, purchase orders, and all material and supply acquisition contracts;
- (used);
7. Material cost distribution worksheet;
  8. Equipment records (list of company owned, rented or other equipment
  9. Vendor rental agreements and subcontractor invoices;
  10. Subcontractor payment certificates;
  11. Canceled checks for the project, including, payroll and vendors;
  12. Job cost report;
  13. Job payroll ledger;
  14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals; project;
  15. Cash disbursements journal;

16. Financial statements for all years reflecting the operations on this
17. Income tax returns for all years reflecting the operations on this
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

### 33. STATE (FLORIDA OR OTHER)-PRODUCED MATERIALS

References:

- 23 CFR 635.409

**NOT ALLOWED**

## 34. STATE/LOCAL OWNED/ FURNISHED/ DESIGNATED MATERIALS

References;

- 23 CFR 635.407

**Do not use unless there is a public interest finding approved by FDOT (if specified in the bid document).**

## 35. SUBCONTRACTING

### References:

- 23CFR 635.116
- FDOT Standard Specifications 8-1

### **Subletting or Assigning of Contracts.**

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with 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 Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting. Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work. If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work. Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Department with a copy of the subcontract. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract. The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor, and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION-  
LOWER TIER COVERED TRANSACTIONS FOR FEDERAL AID CONTRACTS  
(Compliance with 2 CFR Parts 180 and 1200)**

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant/Contractor: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Instructions for Certification

Instructions for Certification - Lower Tier Participants:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION-  
LOWER TIER COVERED TRANSACTIONS FOR FEDERAL AID CONTRACTS**  
(Compliance with 2 CFR Parts 180 and 1200)

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.

## 37. TERMINATION OF CONTRACT

### References:

- 23CFR 635.125

### §635.125 Termination of contract.

(a) All contracts exceeding \$10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) The STD prior to termination of a Federal-aid contract shall consult with and receive the concurrence of the Division Administrator. The extent of Federal-aid participation in contract termination costs, including final settlement, will depend upon the merits of the individual case. However, under no circumstances shall Federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a STD awards the contract for completion of a terminated Federal-aid contract.

(d) When a STD awards the contract for completion of a Federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA will consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

## 38. TIME EXTENSIONS

### References:

- 23CFR 635.121
- FDOT Standard Specifications 8-7.3.2
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### §635.121 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 Division 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 Division 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.

### FDOT Std Spec

#### 8-7.3.2 Contract Time Extensions:

The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations as defined in 8-6.4, in establishing Contract Time. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations as defined in 8-6.4 that prevent the Contractor from productively performing controlling items of work resulting in:

- (1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items; or
- (2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather.

The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall 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. No additional compensation will be made for delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor 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. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the affect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

(1) Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.

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

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

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

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

Furthermore, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If

the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), 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 Department's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the Department's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

## 39. WARRANTY CLAUSES

### References:

- 23 CFR 635.413

Warranty provisions shall be for a specific construction product or feature. Items of maintenance are not eligible for federal projects and shall not be covered. General condition warranties for an entire project are not allowed. Transfer of product warranties is allowed.

Warranty provisions on a NHS project must be approved by FHWA. Warranty provisions on the SHS must not conflict with FDOT Standard Specifications. Off-system warranties may not cover maintenance.

### **§635.413 Guaranty and warranty clauses.**

The STD may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

(a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

(b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.

(c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.

(d) A STD may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.

(e) In the case of a design-build project, the following requirements will apply instead of paragraphs (a) through (d) of this section.

(1) General project warranties may be used on NHS projects, provided:

(i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.

(ii) The warranty is not the sole means of acceptance;

(iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,

(iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.

(2) Performance warranties for specific products on NHS projects may be used at the STD's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

(3) The STD may follow its own procedures regarding the inclusion of warranty provisions on non-NHS Federal-aid design-build contracts.

(4) For best value selections, the STD may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

[60 FR 44274, Aug. 25, 1995, as amended at 67 FR 75926, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007]

## 40. ADDITIONAL REQUIREMENTS

### Records:

**Establishment and Maintenance of Accounting Records:** Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for 5 years after the final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records of the Agency and all subcontractors performing work on the Project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**Costs Incurred for Project:** The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

**Documentation of Project Costs:** All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

**Audit Reports:** Recipients of federal and state funds are to have audits done annually using the following criteria:

The administration of resources awarded by the Department to the Agency may be subject to audits and/or monitoring by the Department, as described in this section.

**Monitoring:** In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, as revised (see "Audits" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department staff to the Agency regarding such audit. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Department's Office of Inspector General (OIG), and the Chief Financial Officer (CFO) or Auditor General.

### Audits

**Part I - Federally Funded:** Recipients of federal funds (i.e., state, local government or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the recipient expends \$500,000 or more in federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the

provisions of OMB Circular A-133, as revised. Exhibit “1” of this Agreement indicates federal resources awarded through the Department by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1 the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 in federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).
4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

**Part II - State Funded:** Recipients of state funds (i.e., a non-state entity as defined by Section 215.97(2) (I), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a state single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes, applicable rules of the Executive Office of the Governor and the CFO, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit “1” to this Agreement indicates state financial assistance awarded through the Department by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other non-state entities. State financial assistance does not include federal direct or pass-through awards and resources received by a non-state entity for federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2) (d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity’s resources (i.e., the cost of such an audit must be paid from the recipient’s resources obtained from other than State entities).

4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

**Part III - Other Audit Requirements:** The recipient shall follow up and take corrective action on audit findings. Preparation of a Summary Schedule of Prior Year Audit Findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals or litigation shall be retained until the action is completed or the dispute is resolved. Access to Project records and audit work papers shall be given to the Department, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

**Part IV - Report Submission:**

1. Copies of financial reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

- a) The Department at each of the following address(es):

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

- b) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

- c) Other federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the financial reporting package required by Part I of this Agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to Section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited Schedule of Expenditures of Federal Awards directly to each of the following:

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the financial reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any Management Letters issued by the auditor, to the Department at each of the following addresses:

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

3. Copies of the financial reporting package required by Part II of this Agreement shall be submitted by or on behalf of the recipient directly to each of the following:

- a) The Department at each of the following address(es):

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

- b) The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

4. Copies of reports or the Management Letter required by Part III of this Agreement shall be submitted by or on behalf of the recipient directly to:

- a) The Department at each of the following address(es):

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

5. Any reports, Management Letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted in a timely manner in accordance with

OMB Circular A-133, as revised, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, as revised, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the financial reporting package was delivered to the recipient in correspondence accompanying the financial reporting package.

**Part V - Record Retention:** The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least 5 years from the date the audit report is issued and shall allow the Department or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit documentation is made available to the Department, or its designee, the state CFO or Auditor General upon request for a period of at least 5 years from the date the audit report is issued, unless extended in writing by the Department.

**Inspection:** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of FHWA to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the Project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement (Section 287.058(1) (c), Florida Statutes) unless the records are exempt.

# 41. LAP- "BIG 4"- EARTHWORK, HOT ASPHALT, CONCRETE & LANDSCAPE

## 1. EARTHWORK AND RELATED OPERATIONS FOR LAP (OFF-SYSTEM). (REV 1-23-12) (FA 2-27-12)

### SECTION 120 EARTHWORK AND RELATED OPERATIONS FOR LAP (OFF-SYSTEM)

#### 120-1 Description.

**120-1.1 General:** Perform earthwork and related operations based on the type of work specified in the Contract and the Earthwork Categories as defined below. Meet the applicable requirements for materials, equipment and construction as specified.

Earthwork and related operations consists of excavation for the construction of the roadway, excavation for structures and pipe, constructing backfill around structures and pipe, and constructing embankments as required for the roadway, ditches, and channel changes.

**120-1.2 Earthwork Categories:** Performance of Earthwork Operations will fall into one of the following Earthwork Categories:

**120-1.2.1 Earthwork Category 1:** Includes the earthwork and related operations associated with the construction of sidewalks and bike paths along with any drainage structures associated with these facilities.

**120-1.2.2 Earthwork Category 2:** Includes the earthwork and related operations associated with the construction of turn lanes and other non-mainline traffic lanes, widening, roadway shoulders, concrete box culverts, retaining walls, and other drainage structures on the non-mainline pavement.

**120-1.2.3 Earthwork Category 3:** Includes the earthwork and related operations associated with the construction of new mainline pavement, along with concrete box culverts, retaining walls, and other drainage structures on the mainline pavement.

#### 120-2 Classes of Excavation.

**120-2.1 Excavation of Unsuitable Material:** Excavation of unsuitable material consists of the removal of muck, clay, rock or any other material that is unsuitable in its original position and that is excavated below the finished grading template. For stabilized bases and sand bituminous road mixes, the finished grading template is the top of the finished base, shoulders and slopes. For all other bases and rigid pavement, the finished grading template is the finished shoulder and slope lines and bottom of completed base or rigid pavement.

**120-2.2 Lateral Ditch Excavation:** Lateral ditch excavation consists of all excavation of inlet and outlet ditches to structures and roadway, changes in channels of streams, and ditches parallel to the roadway right-of-way. Dress lateral ditches to the grade and cross-section shown in the plans.

**120-2.3 Channel Excavation:** Channel excavation consists of the excavation and satisfactory disposal of all materials from the limits of the channel as shown in the plans.

**120-2.4 Excavation for Structures and Pipe:** Excavation for structures consists of the excavation for bridge foundations, box culverts, pipe culverts, storm sewers and all other pipe lines, retaining walls, headwalls for pipe culverts and drains, catch basins, drop inlets, manholes, and similar structures.

### **120-3 Excavation Requirements.**

**120-3.1 Excavation and Replacement of Unsuitable Materials:** Where rock, muck, clay, or other material within the limits of the roadway is unsuitable in its original position, excavate such material to the cross-sections shown in the plans or indicated by the Engineer, and backfill with suitable material. Shape backfill materials to the required cross-sections. Where the removal of plastic soils below the finished earthwork grade is required, meet a construction tolerance of plus or minus 0.2 foot in depth and plus or minus 6 inches (each side) in width.

**120-3.2 Lateral Ditch Excavation:** Excavate inlet and outlet ditches to structures and roadway, changes in channels of streams and ditches parallel to the roadway. Dress lateral ditches to the grade and cross-section shown in the plans.

**120-3.3 Channel Excavation:** Excavate and dispose of all materials from the limits of the channel as shown in the plans. Excavate for bridge foundations, box culverts, pipe culverts, storm sewers and all other pipe lines, retaining walls, headwalls for pipe culverts and drains, catch basins, drop inlets, manholes, and similar structures.

#### **120-3.4 Excavation for Structures and Pipe.**

**120-3.4.1 Requirements for all Excavation:** Excavate foundation pits to permit the placing of the full widths and lengths of footings shown in the plans, with full horizontal beds. Do not round or undercut corners or edges of footings. Perform all excavation to foundation materials, satisfactory to the Engineer, regardless of the elevation shown on the plans. Perform all excavation in stream beds to a depth at least 4 feet below the permanent bed of the stream, unless a firm footing can be established on solid rock before such depth is reached, and excavate to such additional depth as may be necessary to eliminate any danger of undermining. Wherever rock bottom is secured, excavate in such manner as to allow the solid rock to be exposed and prepared in horizontal beds for receiving the masonry. Remove all loose and disintegrated rock or thin strata. Have the Engineer inspect and approve all foundation excavations prior to placing masonry.

#### **120-3.4.2 Earth Excavation:**

**120-3.4.2.1 Foundation Material other than the Rock:** When masonry is to rest on an excavated surface other than rock, take special care to avoid disturbing the bottom of the excavation, and do not remove the final foundation material to grade until just before placing the masonry. In case the foundation material is soft or mucky, the Engineer may require excavation to a greater depth and to backfill to grade with approved material.

**120-3.4.2.2 Foundation Piles:** Where foundation piles are used, complete the excavation of each pit before driving the piles. After the driving is completed, remove all loose and displaced material, leaving a smooth, solid, and level bed to receive the masonry.

**120-3.4.2.3 Removal of Obstructions:** Remove boulders, logs, or any unforeseen obstacles encountered in excavating.

**120-3.4.3 Rock Excavation:** Clean all rock and other hard foundation material, remove all loose material, and cut all rock to a firm surface. Either level, step vertically and horizontally, or serrate the rock, as may be directed by the Engineer. Clean out all seams, and fill them with concrete or mortar.

**120-3.4.4 Pipe Trench Excavation:** Excavate trenches for pipe culverts and storm sewers to the elevation of the bottom of the pipe and to a width sufficient to provide adequate working room. Remove soil not meeting the classification specified as suitable backfill material in 120-8.3.2.2 to a depth of 4 inches below the bottom of the pipe elevation. Remove rock, boulders or other hard lumpy or unyielding material to a depth of 12 inches below the bottom of the pipe elevation. Remove muck or

other soft material to a depth necessary to establish a firm foundation. Where the soils permit, ensure that the trench sides are vertical up to at least the mid-point of the pipe.

For pipe lines placed above the natural ground line, place and compact the embankment, prior to excavation of the trench, to an elevation at least 2 feet above the top of the pipe and to a width equal to four pipe diameters, and then excavate the trench to the required grade.

#### **120-4 Disposal of Surplus and Unsuitable Material.**

**120-4.1 Ownership of Excavated Materials:** Dispose of surplus and excavated materials as shown in the plans or, if the plans do not indicate the method of disposal, take ownership of the materials and dispose of them outside the right-of-way.

**120-4.2 Disposal of Muck on Side Slopes:** As an exception to the provisions of 120-4.1, when approved by the Engineer, muck (A-8 material) may be placed on the slopes, or stored alongside the roadway, provided there is a clear distance of at least 6 feet between the roadway grading limits and the muck, and the muck is dressed to present a neat appearance. In addition, this material may also be disposed of by placing it on the slopes where, in the opinion of the Engineer, this will result in an aesthetically pleasing appearance and will have no detrimental effect on the adjacent developments. Where the Engineer permits the disposal of muck or other unsuitable material inside the right-of-way limits, do not place such material in a manner which will impede the inflow or outfall of any channel or of side ditches. The Engineer will determine the limits adjacent to channels within which such materials may be disposed.

**120-4.3 Disposal of Paving Materials:** Unless otherwise noted, take ownership of paving materials, such as paving brick, asphalt block, concrete slab, sidewalk, curb and gutter, etc., excavated in the removal of existing pavements, and dispose of them outside the right-of-way. If the materials are to remain the property of the Agency, place them in neat piles as directed. Existing limerock base that is removed may be incorporated in the stabilized portion of the subgrade. If the construction sequence will allow, incorporate all existing limerock base into the project as allowed by the Contract Documents.

**120-4.4 Disposal Areas:** Where the Contract Documents require disposal of excavated materials outside the right-of-way, and the disposal area is not indicated in the Contract Documents, furnish the disposal area without additional compensation.

Provide areas for disposal of removed paving materials out of sight of the project and at least 300 feet from the nearest roadway right-of-way line of any road. If the materials are buried, disregard the 300 foot limitation.

#### **120-5 Materials for Embankment.**

**120-5.1 General Requirements for Embankment Materials:** Construct embankments using suitable materials excavated from the roadway or delivered to the jobsite from authorized borrow pits.

Construct the embankment using maximum particle sizes as follows:

In top 12 inches: 3 1/2 inches (in any dimension).

12 to 24 inches: 6 inches (in any dimension).

In the depth below 24 inches: not to exceed 12 inches (in any dimension) or the compacted thickness of the layer being placed, whichever is less.

Spread all material so that the larger particles are separated from each other to minimize voids between them during compaction. Compact around these rocks in accordance with 120-7.2.

When and where approved by the Engineer, larger rocks (not to exceed 18 inches in any dimension) may be placed outside the one to two slope and at least 4 feet or more below the bottom of the base. Compact around these rocks to a firmness equal to that of the supporting soil. Where

constructing embankments adjacent to bridge end bents or abutments, do not place rock larger than 3 1/2 inches in diameter within 3 feet of the location of any end-bent piling.

**120-5.2 Use of Materials Excavated From the Roadway and Appurtenances:** Assume responsibility for determining the suitability of excavated material for use on the project in accordance with the applicable Contract Documents. Consider the sequence of work and maintenance of traffic phasing in the determination of the availability of this material.

**120-5.3 Authorization for Use of Borrow:** Use borrow only when sufficient quantities of suitable material are not available from roadway and drainage excavation, to properly construct the embankment, subgrade, and shoulders, and to complete the backfilling of structures and pipe. Do not use borrow material until so ordered by the Engineer, and then only use material from approved borrow pits.

**120-5.3.1 Haul Routes for Borrow Pits:** Provide and maintain, at no expense to the Agency, all necessary roads for hauling the borrow material. Where borrow area haul roads or trails are used by others, do not cause such roads or trails to deteriorate in condition.

Arrange for the use of all non-public haul routes crossing the property of any railroad. Incur any expense for the use of such haul routes. Establish haul routes which will direct construction vehicles away from developed areas when feasible, and keep noise from hauling operations to a minimum. Advise the Engineer in writing of all proposed haul routes.

**120-5.3.2 Borrow Material for Shoulder Build-up:** When so indicated in the plans, furnish borrow material with a specific minimum bearing value, for building up of existing shoulders. Blend materials as necessary to achieve this specified minimum bearing value prior to placing the materials on the shoulders. Take samples of this borrow material at the pit or blended stockpile.

**120-5.4 Materials Used at Pipes, Culverts, etc.:** Construct embankments over and around pipes, culverts, and bridge foundations with selected materials.

## **120-6 Embankment Construction.**

**120-6.1 General:** Construct embankments in sections of not less than 300 feet in length or for the full length of the embankment.

### **120-6.2 Dry Fill Method:**

**120-6.2.1 General:** Construct embankments to meet compaction requirements in 120-7 and in accordance with the acceptance program requirements in 120-9. Restrict the compacted thickness of the last embankment lift to 6 inches maximum.

As far as practicable, distribute traffic over the work during the construction of embankments so as to cover the maximum area of the surface of each layer.

Construct embankment in the dry whenever normal dewatering equipment and methods can accomplish the needed dewatering.

**120-6.2.1.1 For A-3 and A-2-4 Materials with up to 15% fines:** Construct the embankment in successive layers with lifts up to a maximum compacted thickness of 12 inches. Ensure the percentage of fines passing the No. 200 US Standard sieve in the A-2-4 material does not exceed 15%.

**120-6.2.1.2 For A-1 Plastic materials (As designated in FDOT Design Standard Index 505) and A-2-4 Materials with greater than 15% fines:** Construct the embankment in successive layers with lifts up to a maximum compacted thickness of 6 inches.

**120-6.2.1.3 Equipment and Methods:** Provide normal dewatering equipment including, but not limited to, surface pumps, sump pumps and trenching/digging machinery. Provide normal dewatering methods including, but not limited to, constructing shallow surface drainage trenches/ditches, using sand blankets, sumps and siphons.

When normal dewatering does not adequately remove the water, the Engineer may require the embankment material to be placed in the water or in low swampy ground in accordance with 120-7.2.4.

**120-6.2.2 Placing in Unstable Areas:** Where depositing the material in water, or in low swampy ground that will not support the weight of hauling equipment, construct the embankment by dumping successive loads in a uniformly distributed layer of a thickness not greater than necessary to support the hauling equipment while placing subsequent layers. Once sufficient material has been placed so that the hauling equipment can be supported, construct the remaining portion of the embankment in layers in accordance with the applicable provisions of 120-7.2.4 and 120-7.2.6.

**120-6.2.3 Placing on Steep Slopes:** When constructing an embankment on a hillside sloping more than 20 degrees from the horizontal, before starting the fill, deeply plow or cut into steps the surface of the original ground on which the embankment is to be placed.

**120-6.2.4 Placing Outside Standard Minimum Slope:** Where material that is unsuitable for normal embankment construction is to be used in the embankment outside the standard minimum slope (approximately one to two), place such material in layers of not more than 18 inches in thickness, measured loose. The Contractor may also place material which is suitable for normal embankment, outside such standard minimum slope, in 18 inch layers. Maintain a constant thickness for suitable material placed within and outside the standard minimum slope, unless placing in a separate operation.

### **120-6.3 Hydraulic Method:**

**120-6.3.1 Method of Placing:** When the hydraulic method is used, as far as practicable, place all dredged material in its final position in the embankment by such method. Place and compact any dredged material that is re-handled, or moved and placed in its final position by any other method, as specified in 120-7.2. The Contractor may use baffles or any form of construction he may select, provided the slopes of the embankments are not steeper than indicated in the plans. Remove all timber used for temporary bulkheads or baffles from the embankment, and fill and thoroughly compact the holes thus formed. When placing fill on submerged land, construct dikes prior to beginning of dredging, and maintain the dikes throughout the dredging operation.

**120-6.3.2 Excess Material:** Do not use excess material placed outside the prescribed slopes, below the normal high-water level, to raise the fill. Remove only the portion of this material required for dressing the slopes.

**120-6.3.3 Protection of Openings in Embankment:** Leave openings in the embankments at the bridge sites. Remove any material which invades these openings or existing channels without additional compensation to provide the same depth of channel as existed before the construction of the embankment. Do not excavate or dredge any material within 200 feet of the toe of the proposed embankment.

## **120-7 Compaction Requirements.**

**120-7.1 Moisture Content:** Compact the materials at a moisture content such that the specified density can be attained. If necessary to attain the specified density, add water to the material, or lower the moisture content by manipulating the material or allowing it to dry, as is appropriate.

### **120-7.2 Compaction of Embankments:**

**120-7.2.1 Earthwork Category 1 and 2 Density Requirements:** The Engineer will accept a minimum density of 95% of the maximum density as determined by AASHTO T-99 Method C for all earthwork items requiring densities.

**120-7.2.2 Earthwork Category 3 Density Requirements:** The Engineer will accept a minimum of 100% of the maximum density as determined by AASHTO T-99 Method C for all densities required under category 3.

Except for embankments constructed by the hydraulic method as specified in 120-6.3, and for the material placed outside the standard minimum slope as specified in 120-6.2.4, and for other areas specifically excluded herein, compact each layer of the material used in the formation of embankments to the required density stated above. Uniformly compact each layer using equipment that will achieve the required density, and as compaction operations progress, shape and manipulate each layer as necessary to ensure uniform density throughout the embankment.

**120-7.2.3 Compaction Over Unstable Foundations:** Where the embankment material is deposited in water or on low swampy ground, and in a layer thicker than 12 inches (as provided in 120-6.2.2), compact the top 6 inches (compacted thickness) of such layer to the density as specified in 120-9.5.

**120-7.2.4 Compaction Where Plastic Material Has Been Removed:** Where unsuitable material is removed and the remaining surface is of the A-4, A-5, A-6, or A-7 Soil Groups, as determined by the Engineer, compact the surface of the excavated area by rolling with a sheepsfoot roller exerting a compression of at least 250 psi on the tamper feet, for the full width of the roadbed (subgrade and shoulders). Perform rolling before beginning any backfill, and continue until the roller feet do not penetrate the surface more than 1 inch. Do not perform such rolling where the remaining surface is below the normal water table and covered with water. Vary the procedure and equipment required for this operation at the discretion of the Engineer.

**120-7.2.5 Compaction of Material To Be Used In Base, Pavement, or Stabilized Areas:** Do not compact embankment material which will be incorporated into a pavement, base course, or stabilized subgrade, to be constructed as a part of the same Contract.

**120-7.2.6 Compaction of Grassed Shoulder Areas:** For the upper 6 inch layer of all shoulders which are to be grassed, since no specific density is required, compact only to the extent directed.

**120-7.2.7 Compaction of Grassed Embankment Areas:** For the outer layer of all embankments where plant growth will be established, do not compact. Leave this layer in a loose condition to a minimum depth of 6 inches for the subsequent seeding or planting operations.

**120-7.3 Compaction of Subgrade:** If the plans do not provide for stabilizing, compact the subgrade in both cuts and fills to the density specified in 120-9.5. For undisturbed soils, do not apply density requirements where constructing narrow widening strips or paved shoulders 5 feet or less in width.

Where trenches for widening strips are not of sufficient width to permit the use of standard compaction equipment, perform compaction using vibratory rollers, trench rollers, or other type compaction equipment approved by the Engineer.

Maintain the required density until the base or pavement is placed on the subgrade.

## **120-8 Backfilling Around Structures and Pipe.**

### **120-8.1 Requirements for all Structures:**

**120-8.1.1 General:** Backfill around structures and pipe in the dry whenever normal dewatering equipment and methods can accomplish the needed dewatering.

**120-8.1.2 Equipment and Methods:** Provide normal dewatering equipment including, but not limited to, surface pumps, sump pumps, wellpoints and header pipe and trenching/digging machinery. Provide normal dewatering methods including, but not limited to, constructing shallow surface drainage trenches/ditches, using sand blankets, perforated pipe drains, sumps and siphons.

**120-8.1.3 Backfill Materials:** Backfill to the original ground surface or subgrade surface of openings made for structures, with a sufficient allowance for settlement. The Engineer may require that the material used for this backfill be obtained from a source entirely apart from the structure.

Do not allow heavy construction equipment to cross over culvert or storm sewer pipes until placing and compacting backfill material to the finished earthwork grade or to an elevation at least 4 feet above the crown of the pipe.

**120-8.1.4 Use of A-7 Material:** In the backfilling of trenches, A-7 material may be used from a point 12 inches above the top of the pipe up to the elevation shown on the FDOT Design Standards as the elevation for undercutting of A-7 material.

**120-8.1.5 Time of Placing Backfill:** Do not place backfill against any masonry or concrete abutment, wingwall, or culvert until the Engineer has given permission to do so, and in no case until the masonry or concrete has been in place seven days or until the specified 28-day compressive strength occurs.

**120-8.1.6 Placement and Compaction:** When the backfill material is deposited in water, compact per 120-8.2.5 and 120-8.3.4. Place the material in horizontal layers not exceeding 6 inches compacted thickness, in depth above water level, behind abutments, wingwalls and end bents or end rest piers, and around box culverts and all structures including pipe culverts. The Engineer may approve placing material in thicker lifts of no more than 12 inches compacted thickness above the soil envelope if a test section demonstrates the required density can be achieved. Approval will be based on five passing density tests over the test section consisting of a lift of backfill from structure to structure. The Engineer will identify the test section with the compaction effort and soil classification in the Agency Logbook. In case of a change in compaction effort or soil classification, construct a new test section. The Engineer reserves the right to terminate the Contractor's use of thick lift construction and have him revert to the 6 inch compacted lifts whenever it is determined that satisfactory results are not being obtained.

**120-8.2 Additional Requirements for Structures Other than Pipe:**

**120-8.2.1 Density:** Where the backfill material is deposited in water, obtain a 12 inch layer of comparatively dry material, thoroughly compacted by tamping, before the Engineer verifies layer and density requirements. Meet the requirements of the density Acceptance Criteria.

**120-8.2.2 Box Culverts:** For box culverts over which pavement is to be constructed, compact around the structure to an elevation not less than 12 inches above the top of the structure, using rapid-striking mechanical tampers.

**120-8.2.3 Other Limited Areas:** Compact in other limited areas using mechanical tampers or approved hand tampers, until the cover over the structure is at least 12 inches thick. When hand tampers are used, deposit the materials in layers not more than 4 inches thick using hand tampers suitable for this purpose with a face area of not more than 100 in<sup>2</sup>. Take special precautions to prevent any wedging action against the masonry, and step or terrace the slope bounding the excavation for abutments and wingwalls if required by the Engineer.

**120-8.2.4 Culverts and Piers:** Backfill around culverts and piers on both sides simultaneously to approximately the same elevation.

**120-8.2.5 Compaction Under Wet Conditions:** Where wet conditions do not permit the use of mechanical tampers, compact using hand tampers. Use only A-3 material for the hand tamped portions of the backfill. When the backfill has reached an elevation and condition such as to make the use of the mechanical tampers practical, perform mechanical tamping in such manner and to such extent as to transfer the compaction force into the sections previously tamped by hand.

**120-8.3 Additional Requirements for Pipe 15 Inches Inside Diameter or Greater:**

**120-8.3.1 General:** Trenches for pipe may have up to four zones that must be backfilled.

Lowest Zone: The lowest zone is backfilled for deep undercuts up to within 4 inches of the bottom of the pipe.

**Bedding Zone:** The zone above the Lowest Zone is the Bedding Zone. Usually it will be the backfill which is the 4 inches of soil below the bottom of the pipe. When rock or other hard material has been removed to place the pipe, the Bedding Zone will be the 12 inches of soil below the bottom of the pipe.

**Cover Zone:** The next zone is backfill that is placed after the pipe has been laid and will be called the Cover Zone. This zone extends to 12 inches above the top of the pipe. The Cover Zone and the Bedding Zone are considered the Soil Envelope for the pipe.

**Top Zone:** The Top Zone extends from 12 inches above the top of the pipe to the base or final grade.

### **120-8.3.2 Material:**

**120-8.3.2.1 Lowest Zone:** Backfill areas undercut below the Bedding Zone of a pipe with coarse sand, or other suitable granular material, obtained from the grading operations on the project, or a commercial material if no suitable material is available.

**120-8.3.2.2 Soil Envelope:** In both the Bedding Zone and the Cover Zone of the pipe, backfill with materials classified as A-1, A-2, or A-3. Material classified as A-4 may be used if the pipe is concrete pipe.

**120-8.3.2.3 Top Zone:** Backfill the area of the trench above the soil envelope of the pipe with materials allowed on Design Standard, Index No. 505.

### **120-8.3.3 Compaction:**

**120-8.3.3.1 Lowest Zone:** Compact the soil in the Lowest Zone to approximately match the density of the soil in which the trench was cut.

**120-8.3.3.2 Bedding Zone:** If the trench was not undercut below the bottom of the pipe, loosen the soil in the bottom of the trench immediately below the approximate middle third of the outside diameter of the pipe.

If the trench was undercut, place the bedding material and leave it in a loose condition below the middle third of the outside diameter of the pipe. Compact the outer portions to meet the density requirements of the Acceptance Criteria. Place the material in lifts no greater than 6 inches (compacted thickness).

**120-8.3.3.3 Cover Zone:** Place the material in 6 inches layers (compacted thickness), evenly deposited on both sides of the pipe, and compact with mechanical tampers suitable for this purpose. Hand tamp material below the pipe haunch that cannot be reached by mechanical tampers. Meet the requirements of the density Acceptance Criteria.

**120-8.3.3.4 Top Zone:** Place the material in layers not to exceed 12 inches in compacted thickness. Meet the requirements of the density Acceptance Criteria.

**120-8.3.4 Backfill Under Wet Conditions:** Where wet conditions are such that dewatering by normal pumping methods would not be effective, the procedure outlined below may be used when specifically authorized by the Engineer in writing.

Granular material may be used below the elevation at which mechanical tampers would be effective, but only material classified as A-3. Place and compact the material using timbers or hand tampers until the backfill reaches an elevation such that it's moisture content will permit the use of mechanical tampers. When the backfill has reached such elevation, use normally acceptable backfill material. Compact the material using mechanical tampers in such manner and to such extent as to transfer the compacting force into the material previously tamped by hand.

## **120-9 Acceptance Program.**

**120-9.1 Density over 105%:** When a computed dry density results in a value greater than 105% of the applicable Proctor maximum dry density, the Engineer will perform a second density test within

5 feet. If the second density results in a value greater than 105%, investigate the compaction methods, examine the applicable Maximum Density and material description. If necessary, the Engineer will test an additional sample for acceptance in accordance with AASHTO T 99, Method C.

**120-9.2 Maximum Density Determination:** The Engineer will determine the maximum density and optimum moisture content by sampling and testing the material in accordance with the specified test method listed in 120-9.3.

**120-9.3 Density Testing Requirements:** Compliance with the requirements of 120-9.5 will be determined in accordance FM 1-T 238. The in-place moisture content will be determined for each density in accordance with FM 5-507 (Determination of Moisture Content by Means of a Calcium Carbide Gas Pressure Moisture Tester), or ASTM D 4643 (Laboratory Determination of Moisture Content of Granular Soils By Use of a Microwave Oven).

**120-9.4 Soil Classification:** The Engineer will perform soil classification tests in accordance with AASHTO T-88, and classify soils in accordance with AASHTO M-145 (Standard Specification for Classification of Soils and Soil-Aggregate Mixtures for Highway Construction Purposes) in order to determine compliance with embankment utilization requirements.

**120-9.5 Acceptance Criteria:** The Engineer will accept a minimum density in accordance with 120-7.2 with the following exceptions:

- 1) embankment constructed by the hydraulic method as specified in 120-6.3;
- 2) material placed outside the standard minimum slope as specified in 120-6.2.4;
- 3) other areas specifically excluded herein.

**120-9.6 Frequency:** The Engineer will conduct sampling and testing at a minimum frequency listed in the table below.

Test Name	Frequency
Maximum Density	One per soil type
Density	1 per 500' RDWY (Alt Lift)
Soil Classification	One per Maximum Density

**120-10 Maintenance and Protection of Work.**

While construction is in progress, maintain adequate drainage for the roadbed at all times. Maintain a shoulder at least 3 feet wide adjacent to all pavement or base construction in order to provide support for the edges.

Maintain and protect all earthwork construction throughout the life of the Contract, and take all reasonable precautions to prevent loss of material from the roadway due to the action of wind or water. Repair any slides, washouts, settlement, subsidence, or other mishap which may occur prior to final acceptance of the work. Maintain all channels excavated as a part of the Contract work against natural shoaling or other encroachments to the lines, grades, and cross-sections shown in the plans, until final acceptance of the project.

**120-11 Construction.**

**120-11.1 Construction Tolerances:** Shape the surface of the earthwork to conform to the lines, grades, and cross-sections shown in the plans. In final shaping of the surface of earthwork, maintain a tolerance of 0.3 foot above or below the plan cross-section with the following exceptions:

1. Shape the surface of shoulders to within 0.1 foot of the plan cross-section.
2. Shape the earthwork to match adjacent pavement, curb, sidewalk, structures, etc.
3. Shape the bottom of ditches so that the ditch impounds no water.

4. When the work does not include construction of base or pavement, shape the entire roadbed (shoulder point to shoulder point) to within 0.1 foot above or below the plan cross-section.

Ensure that the shoulder lines do not vary horizontally more than 0.3 foot from the true lines shown in the plans.

**120-11.2 Operations Adjacent to Pavement:** Carefully dress areas adjacent to pavement areas to avoid damage to such pavement. Complete grassing of shoulder areas prior to placing the final wearing course. Do not manipulate any embankment material on a pavement surface.

When shoulder dressing is underway adjacent to a pavement lane being used to maintain traffic, exercise extreme care to avoid interference with the safe movement of traffic.

### **120-12 Method of Measurement.**

**120-12.1 Excavation:** Excavation will be paid for by volume, in cubic yards, calculated by the method of average end areas, unless the Engineer determines that another method of calculation will provide a more accurate result. The material will be measured in its original position by field survey or by photogrammetric means as designated by the Engineer. Measurement for payment will include the excavation of unsuitable material, lateral ditch excavation, channel excavation, and excavation for structures and pipe. Payment will not be made for excavation or embankment beyond the limits shown in the plans or authorized by the Engineer.

**120-12.2 Embankment:** Measurement will be made on a loose volume basis, as measured in trucks or other hauling equipment at the point of dumping on the road. Payment will not be made for embankment beyond the limits shown in the plans or authorized by the Engineer.

### **120-13 Basis of Payment.**

**120-13.1 General:** Prices and payments for the work items included in this Section will be full compensation for all work described herein, including excavating, dredging, hauling, placing, and compacting; dressing the surface of the earthwork; and maintaining and protecting the complete earthwork.

**120-13.2 Excavation:** The total quantity of all excavation specified under this Section will be paid for at the Contract unit price for Excavation. No payment will be made for the excavation of any materials which are used for purposes other than those shown in the plans or designated by the Engineer. No payment will be made for materials excavated outside the lines and grades given by the Engineer, unless specifically authorized by the Engineer.

**120-13.3 Embankment:** The total quantity of embankment specified in this Section will be paid for at the Contract unit price for embankment. No payment will be made for materials which are used for purposes other than those shown in the plans or designated by the Engineer. No payment will be made for materials placed outside the lines and grades given by the Engineer.

2. **HOT MIX ASPHALT FOR LAP (OFF-SYSTEM).**  
**(REV 11-17-11) (FA 2-27-12)**

**SECTION 334**  
**HOT MIX ASPHALT FOR LAP (OFF-SYSTEM)**

**334-1 Description.**

**334-1.1 General:** Construct a Hot Mix Asphalt (HMA) pavement based on the type of work specified in the Contract and the Asphalt Work Categories as defined below. Meet the applicable requirements for plants, equipment, and construction requirements as defined below. Use a HMA mix that meets the requirements of this specification

**334-1.2 Asphalt Work Mix Categories:** Construction of Hot Mix Asphalt Pavement will fall into one of the following work categories:

**334-1.2.1 Asphalt Work Category 1:** Includes the construction of bike paths and miscellaneous asphalt.

**334-1.2.2 Asphalt Work Category 2:** Includes the construction of new HMA turn lanes, paved shoulders and other non-mainline pavement locations.

**334-1.2.3 Asphalt Work Category 3:** Includes the construction of new mainline HMA pavement lanes, milling and resurfacing.

**334-1.3 Mix Types:** Use the appropriate HMA mix as shown in Table 334-1.

Table 334-1 HMA Mix Types			
Asphalt Work Category	Mix Types	Traffic Level	ESALs (millions)
1	Type SP-9.5 <sup>(1)</sup>	A	<0.3
2	Structural Mixes: Types SP-9.5 or SP-12.5 <sup>(1)</sup> Friction Mixes: Types FC-9.5 or FC-12.5 <sup>(1)</sup>	B	0.3 to <3
3	Structural Mixes: Types SP-9.5 or SP-12.5 Friction Mixes: Types FC-9.5 or FC-12.5	C	≥3

(1) Equivalent mixes may be approved as determined by the Engineer. For example, Marshall S-III mixture type is equivalent to Superpave SP-9.5, Marshall S-I is equivalent to Superpave SP-12.5, and Marshall FC-3 is equivalent to Superpave FC-9.5.

A Type SP or FC mix one traffic level higher than the traffic level specified in the Contract may be substituted, at no additional cost (i.e. Traffic Level B may be substituted for Traffic Level A, etc.). Traffic levels are as defined in Section 334 of the Department’s Standard Specifications for Road and Bridge Construction.

**334-1.4 Gradation Classification:** HMA mixes are classified as either coarse or fine, depending on the overall gradation of the mixture. Coarse and fine mixes are defined in 334-3.2.2. Use only fine mixes.

The equivalent AASHTO nominal maximum aggregate size Superpave mixes are as follows:

- Type SP-9.5, FC-9.5 ..... 9.5 mm
- Type SP-12.5, FC-12.5 ..... 12.5 mm

**334-1.5 Thickness:** The total pavement thickness of the HMA pavement will be based on a specified spread rate or plan thickness as shown in the Contract Documents. Before paving, propose a spread rate or thickness for each individual layer meeting the requirements of this specification, which when combined with other layers (as applicable) will equal the plan spread rate or thickness. When the total pavement thickness is specified as plan thickness, the plan thickness and individual layer thickness will be converted to spread rate using the following equation:

$$\text{Spread rate (lbs/yd}^2\text{)} = t \times G_{\text{mm}} \times 43.3$$

where:  $t$  = Thickness (in.) (Plan thickness or individual layer thickness)  
 $G_{\text{mm}}$  = Maximum specific gravity from the mix design

For target purposes only, spread rate calculations shall be rounded to the nearest whole number.

**334-1.5.1 Layer Thicknesses:** Unless otherwise called for in the Contract Documents, the allowable layer thicknesses for HMA mixtures are as follows:

- Type SP-9.5, FC-9.5 ..... 3/4 – 1-1/2 inches
- Type SP-12.5, FC-12.5 ..... 1 1/2 – 2-1/2 inches

**334-1.5.2 Additional Requirements:** The following requirements also apply to HMA mixtures:

1. When construction includes the paving of adjacent shoulders (less than or equal to 5 feet wide), the layer thickness for the upper pavement layer and shoulder shall be the same and paved in a single pass, unless otherwise called for in the Contract Documents.
2. For overbuild layers, use the minimum and maximum layer thicknesses as specified above unless called for differently in the Contract Documents. On variable thickness overbuild layers, the minimum allowable thickness may be reduced by 1/2 inch, and the maximum allowable thickness may be increased by 1/2 inch, unless called for differently in the Contract Documents.

**334-1.6 Weight of Mixture:** The weight of the mixture shall be determined as provided in 320-3.2 of the Florida Department of Transportation (FDOT) specifications.

**334-2 Materials.**

**334-2.1 Superpave Asphalt Binder:** Unless specified elsewhere in the Contract or in 334-2.3.3, use a PG 67-22 asphalt binder from the FDOT’s Qualified Products List (QPL). If the Contract calls for an alternative binder, meet the requirements of FDOT Specifications Section 336 or 916, as appropriate.

**334-2.2 Aggregate:** Use aggregate capable of producing a quality pavement.

For Type FC mixes, use an aggregate blend that consists of crushed granite, crushed Oolitic limestone, other crushed materials (as approved by FDOT for friction courses per Rule 14-103.005, Florida Administrative Code), or a combination of the above. Crushed limestone from the Oolitic formation may be used if it contains a minimum of 12% silica material as determined by FDOT Test Method FM 5-510 and FDOT grants approval of the source prior to its use. As an exception, mixes that contain a minimum of 60% crushed granite may either contain:

1. Up to 40% fine aggregate from other sources; or,
2. A combination of up to 20% RAP and the remaining fine aggregate from other sources.

A list of aggregates approved for use in friction courses may be available on the FDOT’s State Materials Office website. The URL for obtaining this information, if available, is: <ftp://ftp.dot.state.fl.us/fdot/smo/website/sources/frictioncourse.pdf>.

**334-2.3 Reclaimed Asphalt Pavement (RAP) Material:**

**334-2.3.1 General requirements:** RAP may be used as a component of the asphalt mixture, if approved by the Engineer. Usage of RAP is subject to the following requirements:

1. Limit the amount of RAP material used in the mix to a maximum of 50% by weight of total aggregate.
2. Provide stockpiled RAP material that is reasonably consistent in characteristics and contains no aggregate particles which are soft or conglomerates of fines.
3. Provide RAP material having a minimum average asphalt content of 4.0% by weight of total mix. The Engineer may sample the stockpile to verify that this requirement is met.
4. Use a grizzly or grid over the RAP cold bin, in-line roller crusher, screen, or other suitable means to prevent oversized RAP material from showing up in the completed recycle mixture. If oversized RAP material appears in the completed recycle mix, take the appropriate corrective action immediately. If the appropriate corrective actions are not immediately taken, stop plant operations.

**334-2.3.2 Material Characterization:** Assume responsibility for establishing the asphalt binder content, gradation, viscosity and bulk specific gravity ( $G_{sb}$ ) of the RAP material based on a representative sampling of the material.

**334-2.3.3 Asphalt Binder for Mixes with RAP:** Select the appropriate asphalt binder grade based on Table 334-2. Maintain the viscosity of the recycled mixture within the range of 5,000 to 15,000 poises.

Percent RAP	Asphalt Binder Grade
< 20	PG 67-22
20 – 29	PG 64-22
≥ 30	Recycling Agent

**334-3 Composition of Mixture.**

**334-3.1 General:** Compose the asphalt mixture using a combination of aggregates, mineral filler, if required, and asphalt binder material. Size, grade and combine the aggregate fractions to meet the grading and physical properties of the mix design. Aggregates from various sources may be combined.

**334-3.2 Mix Design:**

**334-3.2.1 General:** Design the asphalt mixture in accordance with AASHTO R 35-09, except as noted herein. Submit the proposed mix design with supporting test data indicating compliance with all mix design criteria to the Engineer. Prior to the production of any asphalt mixture, obtain the Engineer’s conditional approval of the mix design. If required by the Engineer, send representative samples of all component materials, including asphalt binder to a laboratory designated by the Engineer for verification. As an exception to these requirements, use a currently approved FDOT Mix Design.

The Engineer will consider any marked variations from original test data for a mix design or any evidence of inadequate field performance of a mix design as sufficient evidence that the properties of the mix design have changed, and at his discretion, the Engineer may no longer allow the use of the mix design.

**334-3.2.2 Mixture Gradation Requirements:** Combine the aggregates in proportions that will produce an asphalt mixture meeting all of the requirements defined in this specification and conform to the gradation requirements at design as defined in AASHTO M 323-07, Table 3. Aggregates from various sources may be combined.

**334-3.2.2.1 Mixture Gradation Classification:** Plot the combined mixture gradation on an FHWA 0.45 Power Gradation Chart. Include the Control Points from AASHTO M323-07, Table-3, as well as the Primary Control Sieve (PCS) Control Point from AASHTO M323-07, Table 4. Fine mixes are defined as having a gradation that passes above or through the primary control sieve control point. Use only fine mixes.

**334-3.2.3 Gyrotory Compaction:** Compact the design mixture in accordance with AASHTO T312-09. Use the number of gyrations as defined in AASHTO R35-09, Table 1.

**334-3.2.4 Design Criteria:** Meet the requirements for nominal maximum aggregate size as defined in AASHTO M323-07, as well as for relative density, VMA, VFA, and dust-to-binder ratio as specified in AASHTO M323-07, Table 6.

**334-3.2.5 Moisture Susceptibility:** Test 4 inch specimens in accordance with FM 1-T 283. Provide a mixture having a retained tensile strength ratio of at least 0.80 and a minimum tensile strength (unconditioned) of 100 psi. If necessary, add a liquid anti-stripping agent from the FDOT's Qualified Products List or hydrated lime in order to meet these criteria.

In lieu of moisture susceptibility testing, add a liquid anti-stripping agent from the FDOT's Qualified Products List. Add 0.5% liquid anti-stripping agent by weight of binder.

**334-3.2.6 Additional Information:** In addition to the requirements listed above, provide the following information on each mix design:

1. The design traffic level and the design number of gyrations ( $N_{\text{design}}$ ).
2. The source and description of the materials to be used.
3. The FDOT source number and the FDOT product code of the aggregate components furnished from an FDOT approved source (if required).
4. The gradation and proportions of the raw materials as intended to be combined in the paving mixture. The gradation of the component materials shall be representative of the material at the time of use. Compensate for any change in aggregate gradation caused by handling and processing as necessary.
5. A single percentage of the combined mineral aggregate passing each specified sieve. Degradation of the aggregate due to processing (particularly material passing the No. 200 sieve) should be accounted for and identified.
6. The bulk specific gravity ( $G_{\text{sb}}$ ) value for each individual aggregate and RAP component.
7. A single percentage of asphalt binder by weight of total mix intended to be incorporated in the completed mixture, shown to the nearest 0.1%.
8. A target temperature at which the mixture is to be discharged from the plant and a target roadway temperature. Do not exceed a target temperature of 330°F for modified asphalts and 315°F for unmodified asphalts.
9. Provide the physical properties achieved at four different asphalt binder contents. One shall be at the optimum asphalt content, and must conform to all specified physical requirements.
10. The name of the mix designer.
11. The ignition oven calibration factor.

### 334-4 Process Control.

Assume full responsibility for controlling all operations and processes such that the requirements of these Specifications are met at all times. Perform any tests necessary at the plant and roadway to control the process.

### 334-5 General Construction Requirements.

**334-5.1 Weather Limitations:** Do not transport asphalt mix from the plant to the roadway unless all weather conditions are suitable for the laying operations.

#### 334-5.2 Limitations of Laying Operations:

**334-5.2.1 General:** Spread the mixture only when the surface upon which it is to be placed has been previously prepared, is intact, firm, and properly cured, and is dry.

**334-5.2.2 Air Temperature:** Spread the mixture only when the air temperature in the shade and away from artificial heat is at least 40°F for layers greater than 1 inch (100 lb per square yard) in thickness and at least 45°F for layers 1 inch (100 lb per square yard) or less in thickness (this includes leveling courses). The minimum temperature requirement for leveling courses with a spread rate of 50 lb per square yard or less is 50°F.

**334-5.3 Mix Temperature:** Heat and combine the ingredients of the mix in such a manner as to produce a mixture with a temperature at the plant and at the roadway, within a range of plus or minus 30°F from the target temperature as shown on the mix design. Reject all loads outside of this range.

**334-5.4 Transportation of the Mixture:** Transport the mixture in vehicles previously cleaned of all foreign material. After cleaning, thinly coat the inside surface of the truck bodies with soapy water or an asphalt release agent as needed to prevent the mixture from adhering to the beds. Do not allow excess liquid to pond in the truck body. Do not use diesel fuel or any other hazardous or environmentally detrimental material as a coating for the inside surface of the truck body. Cover each load at all times.

#### 334-5.5 Preparation of Surfaces Prior to Paving:

**334-5.5.1 Cleaning:** Clean the surface of all loose and deleterious material by the use of power brooms or blowers, supplemented by hand brooming where necessary.

**334-5.5.2 Patching and Leveling Courses:** As shown in the plans, bring the existing surface to proper grade and cross-section by the application of patching or leveling courses.

**334-5.5.3 Application over Surface Treatment:** Where an asphalt mix is to be placed over a surface treatment, sweep and dispose of all loose material from the paving area.

**334-5.5.4 Tack Coat:** Use a rate of application as defined in Table 334-3. Control the rate of application to be within plus or minus 0.01 gal. per square yard of the target application rate. The target application rate may be adjusted by the Engineer to meet specific field conditions. Determine the rate of application as needed to control the operation. When using RA-550, multiply the target rate of application by 0.6.

Asphalt Mixture Type	Underlying Pavement Surface	Target Tack Rate (gal/yd <sup>2</sup> )
Base Course, Structural Course, Dense Graded Friction Course	Newly Constructed Asphalt Layers	0.02 minimum
	Milled Surface or Oxidized and Cracked Pavement	0.06
	Concrete Pavement	0.08

Open Graded Friction Course	Newly Constructed Asphalt Layers	0.05
	Milled Surface	0.07

**334-5.6 Paving:**

**334-5.6.1 Alignment of Edges:** With the exception of pavements placed adjacent to curb and gutter or other true edges, place all pavements by the stringline method to obtain an accurate, uniform alignment of the pavement edge. Control the unsupported pavement edge to ensure that it will not deviate more than plus or minus 1.5 inches from the stringline.

**334-5.6.2 Rain and Surface Conditions:** Immediately cease transportation of asphalt mixtures from the plant when rain begins at the roadway. Do not place asphalt mixtures while rain is falling, or when there is water on the surface to be covered. Once the rain has stopped and water has been removed from the tacked surface to the satisfaction of the Engineer and the temperature of the mixture caught in transit still meets the requirements as specified in 334-5.3, the Contractor may then place the mixture caught in transit.

**334-5.6.3 Checking Depth of Layer:** Check the depth of each layer at frequent intervals to ensure a uniform spread rate that will meet the requirements of the Contract.

**334-5.6.4 Hand Spreading:** In limited areas where the use of the spreader is impossible or impracticable, spread and finish the mixture by hand.

**334-5.6.5 Spreading and Finishing:** Upon arrival, dump the mixture in the approved paver, and immediately spread and strike-off the mixture to the full width required, and to such loose depth for each course that, when the work is completed, the required weight of mixture per square yard, or the specified thickness, is secured. Carry a uniform amount of mixture ahead of the screed at all times.

**334-5.6.6 Thickness Control:** Ensure the spread rate is within 10% of the target spread rate, as indicated in the Contract. When calculating the spread rate, use, at a minimum, an average of five truckloads of mix. When the average spread rate is beyond plus or minus 10% of the target spread rate, monitor the thickness of the pavement layer closely and adjust the construction operations.

If the Contractor fails to maintain an average spread rate within plus or minus 10% of the target spread rate for two consecutive days, the Engineer may elect to stop the construction operation at any time until the issue is resolved.

When the average spread rate for the total structural or friction course pavement thickness exceeds the target spread rate by  $\pm 50$  lbs per sy for layers  $\geq 2.5$  inches or exceeds the target spread rate by  $\pm 25$  lbs per sy for layers  $< 2.5$  inches, address the unacceptable pavement in accordance with 334-5.10.4, unless an alternative approach is agreed upon by the Engineer.

**334-5.7 Leveling Courses:**

**334-5.7.1 Patching Depressions:** Before spreading any leveling course, fill all depressions in the existing surface as shown in the plans.

**334-5.7.2 Spreading Leveling Courses:** Place all courses of leveling with an asphalt paver or by the use of two motor graders, one being equipped with a spreader box. Other types of leveling devices may be used upon approval by the Engineer.

**334-5.7.3 Rate of Application:** When using Type SP-9.5 (fine graded) for leveling, do not allow the average spread of a layer to be less than 50 pounds per square yard or more than 75 pounds per square yard. The quantity of mix for leveling shown in the plans represents the average for the entire project; however, the Contractor may vary the rate of application throughout the project as directed by the Engineer. When leveling in connection with base widening, the Engineer may require placing all the leveling mix prior to the widening operation.

**334-5.8 Compaction:** For each paving or leveling train in operation, furnish a separate set of rollers, with their operators.

When density testing for acceptance is required, select equipment, sequence, and coverage of rolling to meet the specified density requirement. Regardless of the rolling procedure used, complete the final rolling before the surface temperature of the pavement drops to the extent that effective compaction may not be achieved or the rollers begin to damage the pavement.

When density testing for acceptance is not required, use a rolling pattern approved by the Engineer.

Use hand tamps or other satisfactory means to compact areas which are inaccessible to a roller, such as areas adjacent to curbs, headers, gutters, bridges, manholes, etc.

### **334-5.9 Joints.**

**334-5.9.1 Transverse Joints:** Construct smooth transverse joints, which are within 3/16 inch of a true longitudinal profile when measured with a 15 foot manual straightedge. These requirements are waived for transverse joints at the beginning and end of the project and at the beginning and end of bridge structures, if the deficiencies are caused by factors beyond the control of the Contractor such as no milling requirement, as determined by the Engineer. When smoothness requirements are waived, construct a reasonably smooth transitional joint.

**334-5.9.2 Longitudinal Joints:** For all layers of pavement except the leveling course, place each layer so that longitudinal construction joints are offset 6 to 12 inches laterally between successive layers. Do not construct longitudinal joints in the wheel paths. The Engineer may waive these requirements where offsetting is not feasible due to the sequence of construction.

**334-5.10 Surface Requirements:** Construct a smooth pavement with good surface texture and the proper cross slope.

**334-5.10.1 Texture of the Finished Surface of Paving Layers:** Produce a finished surface of uniform texture and compaction with no pulled, torn, raveled, crushed or loosened portions and free of segregation, bleeding, flushing, sand streaks, sand spots, or ripples. Correct any area of the surface that does not meet the foregoing requirements in accordance with 334-5.10.4.

**334-5.10.2 Cross Slope:** Construct a pavement surface with cross slopes in compliance with the requirements of the Contract Documents.

**334-5.10.3 Pavement Smoothness:** Construct a smooth pavement meeting the requirements of this Specification. Furnish a 15 foot manual and a 15 foot rolling straightedge meeting the requirements of FM 5-509.

#### **334-5.10.3.1 Straightedge Testing:**

**334-5.10.3.1.1 Acceptance Testing:** Using a rolling straightedge, test the final (top) layer of the pavement. Test all pavement lanes where the width is constant using a rolling straightedge and document all deficiencies on a form approved by the Engineer. Notify the Engineer of the location and time of all straightedge testing a minimum of 48 hours before beginning testing.

**334-5.10.3.1.2 Final (Top) Pavement Layer:** At the completion of all paving operations, straightedge the final (top) layer either behind the final roller of the paving train or as a separate operation. Address all deficiencies in excess of 3/16 inch in accordance with 334-5.10.4, unless waived by the Engineer. Retest all corrected areas.

**334-5.10.3.1.3 Straightedge Exceptions:** Straightedge testing will not be required in the following areas: shoulders, intersections, tapers, crossovers, sidewalks, bicycle/shared use paths, parking lots and similar areas, or in the following areas when they are less than 250 feet in length: turn lanes, acceleration/deceleration lanes and side streets. In the event the Engineer identifies a

surface irregularity in the above areas that is determined to be objectionable, straightedge and address all deficiencies in excess of 3/8 inch in accordance with 334-5.10.4.

**334-5.10.4 Correcting Unacceptable Pavement:** Correct deficiencies in the pavement layer by removing and replacing the full depth of the layer, extending a minimum of 50 feet on both sides of the defective area for the full width of the paving lane, at no additional cost.

**334-6 Acceptance of the Mixture.**

**334-6.1 General:** The asphalt mixture will be accepted based on the Asphalt Work Category as defined below:

1. Asphalt Work Category 1 – Certification by the Contractor as defined in 334-6.2.
2. Asphalt Work Category 2 – Certification and process control testing by the Contractor as defined in 334-6.3
3. Asphalt Work Category 3 – Process control testing by the Contractor and acceptance testing by the Engineer as defined in 334-6.4.

**334-6.2 Certification by the Contractor:** On Asphalt Work Category 1 construction, the Engineer will accept the mix on the basis of visual inspection. Submit a Notarized Certification of Specification Compliance letter on company letterhead to the Engineer stating that all material produced and placed on the project meets the requirements of the Specifications. The Engineer may run independent tests to determine the acceptability of the material.

**334-6.3 Certification and Process Control Testing by the Contractor:** On Asphalt Work Category 2 construction, submit a Notarized Certification of Specification Compliance letter on company letterhead to the Engineer stating that all material produced and placed on the project meets the requirements of the Specifications, along with supporting test data documenting all process control testing as described in 334-6.3.1. If required by the Contract, utilize an Independent Laboratory as approved by the Engineer for the process control testing. The mix will also require visual acceptance by the Engineer. In addition, the Engineer may run independent tests to determine the acceptability of the material. Material failing to meet these acceptance criteria will be addressed as directed by the Engineer such as but not limited to acceptance at reduced pay, delineation testing to determine the limits of the questionable material, removal and replacement at no cost to the agency, or performing an Engineering analysis to determine the final disposition of the material. .

**334-6.3.1 Process Control Sampling and Testing Requirements:** Perform process control testing at a frequency of once per day. Obtain the samples in accordance with FDOT Method FM 1-T 168. Test the mixture at the plant for gradation ( $P_{.8}$  and  $P_{.200}$ ) and asphalt binder content ( $P_b$ ). Measure the roadway density with 6 inch diameter roadway cores at a minimum frequency of once per 1,500 feet of pavement with a minimum of three cores per day.

Determine the asphalt binder content of the mixture in accordance with FM 5-563. Determine the gradation of the recovered aggregate in accordance with FM 1-T 030. Determine the roadway density in accordance with FM 1-T 166. The minimum roadway density will be based on the percent of the maximum specific gravity (Gmm) from the approved mix design. If the Contractor or Engineer suspects that the mix design Gmm is no longer representative of the asphalt mixture being produced, then a new Gmm value will be determined from plant-produced mix with the approval of the Engineer. Roadway density testing will not be required in certain situations as described in 334-6.4.1. Assure that the asphalt binder content, gradation and density test results meet the criteria in Table 334-4.

Table 334-4 Process Control and Acceptance Values
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Characteristic	Tolerance
Asphalt Binder Content (percent)	Target $\pm$ 0.55
Passing No. 8 Sieve (percent)	Target $\pm$ 6.00
Passing No. 200 Sieve (percent)	Target $\pm$ 2.00
Roadway Density (daily average)	Minimum 91.5% of Gmm
Roadway Density (any single core)	Minimum 88.0 % of Gmm

**334-6.4 Process Control Testing by the Contractor and Acceptance Testing by the Engineer:** On Asphalt Work Category 3, perform process control testing as described in 334-6.3.1. In addition, the Engineer will accept the mixture at the plant with respect to gradation ( $P_{-8}$  and  $P_{-200}$ ) and asphalt binder content ( $P_b$ ). The mixture will be accepted on the roadway with respect to density. The Engineer will sample and test the material as described in 334-6.3.1. The Engineer will randomly obtain at least one set of samples per day. Assure that the asphalt content, gradation and density test results meet the criteria in Table 334-4. Material failing to meet these acceptance criteria will be addressed as directed by the Engineer such as but not limited to acceptance at reduced pay, delineation testing to determine the limits of the questionable material, removal and replacement at no cost to the agency, or performing an Engineering analysis to determine the final disposition of the material.

**334-6.4.1 Acceptance Testing Exceptions:** When the total quantity of any mix type in the project is less than 500 tons, the Engineer will accept the mix on the basis of visual inspection. The Engineer may run independent tests to determine the acceptability of the material.

Density testing for acceptance will not be performed on widening strips or shoulders with a width of 5 feet or less, variable thickness overbuild courses, leveling courses, any asphalt layer placed on subgrade (regardless of type), miscellaneous asphalt pavement, bike/shared use paths, crossovers, or any course with a specified thickness less than 1 inch or a specified spread rate less than 100 lb per square yard. Density testing for acceptance will not be performed on asphalt courses placed on bridge decks or approach slabs. In addition, density testing for acceptance will not be performed on the following areas when they are less than 1,000 feet continuous in length: turning lanes, acceleration lanes, deceleration lanes, shoulders, parallel parking lanes, or ramps. Density testing for acceptance will not be performed in intersections. The limits of the intersection will be from stop bar to stop bar for both the mainline and side streets. Compact these courses in accordance with a standard rolling procedure approved by the Engineer. In the event that the rolling procedure deviates from the approved procedure, placement of the mix will be stopped.

### **334-7 Method of Measurement.**

For the work specified under this Section, the quantity to be paid for will be the weight of the mixture, in tons.

The bid price for the asphalt mix will include the cost of the liquid asphalt or the asphalt recycling agent and the tack coat application as specified in 334-5.5.4. There will be no separate payment or unit price adjustment for the asphalt binder material in the asphalt mix.

### **334-8 Basis of Payment.**

**334-8.1 General:** Price and payment will be full compensation for all the work specified under this Section.

**3. CONCRETE FOR LAP (OFF-SYSTEM).  
(REV 12-20-11) (FA 2-27-12)**

**SECTION 344  
CONCRETE FOR LAP (OFF-SYSTEM)**

**344-1 Description.**

**344-1 General:** Construct concrete based on the type of work as described in the Contract and the concrete work categories as defined below.

**344-1.2 Work Categories:** Construction will fall into one of the following concrete work categories:

**344-1.2.1 Concrete Work Category 1:** Includes the construction of sidewalks, curb and gutter, ditch and slope pavement, or other non-reinforced cast-in-place elements.

**344-1.2.2 Concrete Work Category 2:** Includes the construction of precast concrete including concrete barriers, traffic railing barriers, parapets, sound barriers, inlets, manholes, junction boxes, pipe culverts, storm sewers, box culverts, prestressed concrete poles, concrete bases for light poles, highway sign foundations, retaining wall systems, traffic separators or other structural precast elements.

**344-1.2.3 Concrete Work Category 3:** Includes the work associated with the placement and/or construction of structural cast-in-place concrete meeting the requirements of this section.

**344-2 Materials.**

**344-2.1 General:** Use concrete composed of a mixture of Portland cement, aggregates, and water, with or without chemical or mineral admixtures that meet the following requirements:

**344-2.1.1 Portland Cement:** Portland cements meeting the requirements of AASHTO M-85 or ASTM C-150 is required. Different brands of cement, cement of the same brand from different facilities or different types of cement shall be stored separately and shall not be mixed.

**344-2.1.2 Coarse and Fine Aggregates:** Aggregates shall meet ASTM C 33. Source approval by the FDOT is not required.

**344-2.1.3 Water:** Water shall meet the requirements of ASTM C 1602.

**344-2.1.4 Chemical Admixtures:** Chemical admixtures shall be listed on the FDOT Qualified Products List. Admixtures may be added at the dosage rates recommended by the manufacturer.

**344-2.1.5 Pozzolans and Slag:** Pozzolans and Slag shall meet the requirements of Table 344-1. Fly ash shall not include the residue resulting from the burning of municipal garbage or any other refuse with coal, or the burning of industrial or municipal garbage in incinerators.

Type or Class	Test Method	Exceptions
Class C Fly Ash	ASTM C 618	Not to be used with Types IP or IS cements.
Class F Fly Ash	ASTM C 618	Not to be used with Types IP or IS cements.
Petroleum Coke Class F	ASTM C 618	Not to be used with Types IP or IS cements.
Bark Ash Class F	ASTM C 618	Not to be used with Types IP or IS cements.
Silica Fume	ASTM C 1240	
Metakaolin	ASTM C 618	
Slag	ASTM C 989	Use only ground granulated blast-furnace slag grade 100 or 120.
Ultra Fine Fly Ash	ASTM C 618	Not to be used with Types IP or IS cements.

**344-3 Production, Mixing and Delivery of Concrete.**

**344-3.1 Concrete Production Requirements:**

**344-3.1.1 Category 1:** Use a concrete production facility that is certified by the National Ready Mixed Concrete Association (NRMCA) or listed on the FDOT list of non-structural concrete producers. Concrete production facilities listed on the FDOT Producers with Accepted QC Programs list for structural concrete may also be used for Category 1.

**344-3.1.2 Category 2:** Use a prestressed and or precast facility listed on the FDOT Producers with Accepted QC Programs for precast or prestressed concrete.

**344-3.1.3 Category 3:** Use a structural concrete facility listed on the FDOT Producers with Accepted QC Programs for structural concrete.

**344-3.2 Classes of Concrete:** Meet the requirements of Table 344-2.

Table 344-2							
Class	Minimum Strength (day) (psi)	Target Slump (28 days) (inches)	Target Range (inches)	Air Content Range (%)	Minimum Cementitious Materials (lb/yd <sup>3</sup> )	Total Cementitious Content (lb/lb)	Maximum Water to Cementitious Material Ratio
Category 1							
Class NS	2,500	N/A	N/A	N/A	N/A	N/A	N/A
Category 3							
I	3,000	3	± 1.5	1.0 to 6.0	470		0.53
I (Pavement)	3,000	2	± 1.5	1.0 to 6.0	470		0.50
II	3,400	3	± 1.5	1.0 to 6.0	470		0.53
II (Bridge Deck)	4,500	3	± 1.5	1.0 to 6.0	611		0.44
III	5,000	3	± 1.5	1.0 to 6.0	611		0.44
III (Seal)	3,000	8	± 1.5	1.0 to 6.0	611		0.53
IV	5,500	3	± 1.5	1.0 to 6.0	658		0.41
IV (Drilled Shaft)	4,000	8.5	± 1.5	0.0 to 6.0	658		0.41
V (Special)	6,000	3	± 1.5	1.0 to 6.0	752		0.37
V	6,500	3	± 1.5	1.0 to 6.0	752		0.37
VI	8,500	3	± 1.5	1.0 to 6.0	752		0.37

**344-3.3 Contractors Quality Control:** For Categories 1 and 2, assume full responsibility for controlling all operations and processes such that the requirements of these Specifications are met at all times.

For Category 3, furnish a Quality Control (QC) plan to identify to the Engineer how quality will be ensured at the project site. During random inspections, the Engineer will use this document to verify that the construction of the project is in agreement with the QC plan.

**344-3.4 Concrete Mix Design:** Before producing any Category 1 or Category 2, submit the proposed mix designs to the Engineer on a form provided by the Engineer. For Category 3, submit to the Engineer for approval, FDOT approved mix designs. Do not use concrete mix designs without prior approval of the Engineer.

Materials may be adjusted provided that the theoretical yield requirement of the approved mix design is met. Show all required original approved design mix data and batch adjustments on an Engineer approved concrete delivery ticket.

**344-3.5 Delivery:** For Category 3, the maximum allowable transit time of concrete is 90 minutes.

Furnish a delivery ticket on a form approved by the Engineer with each batch of concrete before unloading at the placement site. Record material quantities incorporated into the mix on the delivery ticket. Ensure that the Batchers responsible for producing the concrete signs the delivery ticket certifying that the batch was produced and delivered in accordance with these requirements. Sign the delivery ticket certifying that the concrete was placed in accordance with these requirements.

**344-3.6 Placing Concrete:**

**344-3.6.1 Concreting in Cold Weather:** Do not mix or place concrete when the air temperature at placement is below 45°F.

During the curing period, if NOAA predicts the ambient temperature to fall below 35°F for 12 hours or more or to fall below 30°F for more than 4 hours, enclose the structure in such a way that the air temperature within the enclosure can be kept above 50°F for a period of 3 days after placing the concrete or until the concrete reaches a minimum compressive strength of 1,500 psi.

Assume all risks connected with the placing and curing of concrete. Although the Engineer may give permission to place concrete, the Contractor is responsible for satisfactory results. If the placed concrete is determined to be unsatisfactory, remove, dispose of, and replace the concrete at no expense to the Agency.

**344-3.6.2 Concreting in Hot Weather:** For Category 3, hot weather concreting is defined as the production, placing and curing of concrete when the concrete temperature at placing exceeds 86°F but is less than 100°F.

Unless the specified hot weather concreting measures are in effect, reject concrete exceeding 86°F at the time of placement. Regardless of special measures taken, reject concrete exceeding 100°F. Predict the concrete temperatures at placement time and implement hot weather measures to avoid production shutdown.

**344-3.7 Mixers:** For Category 3 concrete, do not place concrete from a truck mixer that does not have a current FDOT mixer identification card.

**344-3.8 Small Quantities of Concrete:** With approval of the Engineer, small quantities of concrete, less than 3 cubic yards placed in one day and less than 0.5 cubic yards placed in a single placement may be accepted using a pre-bagged mixture. The Engineer may verify that the pre-bagged mixture is prepared in accordance with the manufacturer's recommendations and will meet the requirements of this Specification.

**344-3.9 Sampling and Testing:**

**344-3.9.1 Category 1:** The Engineer may sample and test the concrete to verify its quality. The minimum 28 day compressive strength requirement for this concrete is 2,500 psi.

**344-3.9.2: Category 2:** No sampling and testing is required for category 2.

**344-3.9.3 Category 3:** The Engineer will randomly select a sample from each 200 cubic yards or one day's production to determine plastic properties and to make three 4 x 8 inch cylinders for testing by the Engineer at 28 days to ensure that the design compressive strength has been met for the class of concrete as specified in Table 344-2.

**344-3.10 Records:** Ensure the following records are available for review for at least 3 years after final acceptance of the project:

1. Approved concrete mix designs.
2. Materials source (delivery tickets, certifications, certified mill test reports).
3. A copy of the scale company or testing agency report showing the observed deviations from quantities checked during calibration of the scales and meters.

4. A copy of the documentation certifying the admixture weighing/measuring devices.

**344-4 Acceptance of the Work.**

**344-4.1 Category 1 Work:** Category 1 work will be accepted based on certification by the batcher and contractor on the delivery ticket.

**344-4.2 Category 2 Work:** Certify that the precast elements were produced by a production facility on the FDOT’s list of Producers with Accepted QC Programs for precast or prestressed concrete. In addition, the producer’s logo shall be stamped on the element. The producer shall not use the Florida Department of Transportation QC stamp on elements used on this project. Provide a statement of certification from the manufacturer of the precast element that the element meets the requirements of this Specification.

**344-4.3 Category 3 Work:** Category 3 concrete will be accepted based on the Engineer’s test results for plastic properties and compressive strength requirements for the class of concrete as defined in Table 344-2. In addition, a Delivery Ticket as described in 344-3.5 will be required for acceptance of the material at the project site.

**344-4.4 Small Quantities of Concrete:** Category 3 concrete meeting the definition of 344-3.8 will be accepted in accordance with 344-4.3 based on test results for plastic properties and compressive strength.

**344-5 Method of Measurement.**

The quantities to be paid for will be the items shown in the plans, completed and accepted.

**344-6 Basis of Payment.**

Prices and payments will be full compensation for all work and materials specified in this Section.

**4. LANDSCAPE INSTALLATION FOR LAP (OFF-SYSTEM).  
(REV 4-5-11) (FA 4-15-11)**

**SECTION 580  
LANDSCAPE INSTALLATION FOR LAP (OFF-SYSTEM)**

**580-1 Description.**

Plant trees and shrubs of the species, size, and quality indicated in the plans.

The Engineer reserves the right to adjust the number and location of any of the designated types and species to be used at any of the locations shown, in order to provide for any unanticipated effects which might become apparent after the substantial completion of other phases of the project, or for other causes.

**580-2 Materials.**

**580-2.1 Plants:**

**580-2.1.1 Authority for Nomenclature; Species, etc.:** For the designated authority in the identification of all plant material, refer to two publications of L.H. Bailey: “Hortus III” and “Manual of Cultivated Plants,” and ensure that all specimens are true to type, name, etc., as described

therein. For the standard nomenclature, refer to the publication of the American Joint Committee on Horticultural Nomenclature, "Standardized Plant Names."

**580-2.1.2 Grade Standards and Conformity with Type and Species:** Only use nursery grown plant material except where specified as Collected Material. Use nursery grown plant material that complies with all required inspection, grading standards, and plant regulations in accordance with the latest edition of the Florida Department of Agriculture's "Grades and Standards for Nursery Plants".

Except where a lesser grade might be specifically specified in the plans, ensure that the minimum grade for all trees and shrubs is Florida No. 1. Ensure that all plants are the proper size and grade at the time of delivery to the site, throughout the project construction period and during any designated plant establishment period.

Ensure that plant materials are true to type and species and that any plant materials not specifically covered in Florida Department of Agriculture's "Grades and Standards for Nursery Plants" conform in type and species with the standards and designations in general acceptance by Florida nurseries.

Ensure that plant materials are shipped with tags stating the botanical and common name of the plant.

**580-2.1.3 Inspection and Transporting:** Move nursery stock in accordance with all Federal and State regulations therefor, and accompany each shipment with the required inspection certificates for filing with the Engineer.

**580-2.2 Water:** Water used in landscaping operations may be obtained from any approved source. Ensure that water is free of any substance which might be detrimental to plant growth. The use of effluent water is subject to approval and must meet all Federal, State and Local requirements.

### **580-3 Specific Requirements for the Various Plant Designations.**

#### **580-3.1 Balled-and-Burlapped Plants (B&B), and Wired Balled-and-Burlapped (WB & B):**

**580-3.1.1 General:** Properly protect the root ball of these plants until planting them. The Engineer may reject any plant which shows evidence of having been mishandled.

Set the B&B and WB&B plants then remove the top 2/3 of all wire, rope, and binding surrounding the plant. Remove the burlap from the top 4 inches of the root ball. Do not disturb the root ball in any way. Bare root material is not allowed for substitution.

At least 90 days before digging out B & B and WB & B plants, root-prune those 1 1/2 inches or greater in diameter and certify such fact on accompanying invoices.

**580-3.1.2 Provisions for Wiring:** For plants grown in soil of a loose texture, which does not readily adhere to the root system (and especially in the case of large plants or trees), the Engineer may require WB & B plants. For WB & B plants, before removing the plant from the excavated hole, place sound hog wire around the burlapped ball, and loop and tension it until the tightened wire netting substantially packages the burlapped ball such as to prevent disturbing of the loose soil around the roots during handling.

**580-3.2 Container-Grown Plants (CG):** The Engineer will not accept any CG plants with roots which have become pot-bound or for which the top system is too large for the size of the container. Fully cut and open all containers in a manner that will not damage the root system. Do not remove CG plants from the container until immediately before planting to prevent damage to the root system.

**580-3.3 Collected Plants (Trees and Shrubs) (C):** Use C plants which have a root ball according to "Florida Grades and Standards for Nursery Plants". Do not plant any C plant before the Engineer's inspection and acceptance at the planting site.

**580-3.4 Collected Plants (Herbaceous) (HC):** The root mass and vegetative portions of collected herbaceous plants shall be as large as the specified container-grown equivalent. Do not plant any collected plant before inspection and acceptance by the Engineer.

**580-3.5 Specimen Plants (Special Grade):** When Specimen (or Special Grade) plants are required, label them as such on the plant list, and tag the plant to be furnished.

**580-3.6 Palms:** Wrap the roots of all plants of the palm species before transporting, except if they are CG plants and ensure that they have an adequate root ball structure and mass for healthy transplantation as defined in “Florida Grades and Standards for Nursery Plants”.

The Engineer will not require burlapping if the palm is carefully dug from marl or heavy soil that adheres to the roots and retains its shape without crumbling. During transporting and after arrival, carefully protect root balls of palms from wind and exposure to the sun. Muck grown palms are not allowed. After delivery to the job site, if not planting the palm within 24 hours, cover the root ball with a moist material. Plant all palms within 48 hours of delivery to the site.

Move sabal and coconut palms in accordance with the “Florida Grades and Standards for Nursery Plants.”

**580-3.7 Substitution of Container-Grown (CG) Plants:** With the Engineer’s approval, the Contractor may substitute CG plants for any other root classification types, if he has met all other requirements of the Contract Documents.

#### **580-4 Planting Requirements.**

**580-4.1 Layout:** Prior to any excavation or planting, mark all planting beds and individual locations of palms, trees, large shrubs and proposed art and architectural structures, as shown in the plans, on the ground with a common bright orange colored spray paint, or with other approved methods, within the project limits. Obtain the Engineer’s approval and make necessary utility clearance requests.

**580-4.2 Excavation of Plant Holes:** Excavate plant holes after an area around the plant three times the size of the root ball has been tilled to a depth of the root ball. Ensure that the plant hole is made in the center of the tilled area only to the depth of the plant root ball.

Where excess material has been excavated from the plant hole, use the excavated material to backfill to proper level.

**580-4.3 Setting of Plants:** Center plants in the hole. Lower the plant into the hole so that it rests on a prepared hole bottom such that the roots are level with, or slightly above, the level of their previous growth and so oriented such as to present the best appearance.

Backfill with native soil, unless otherwise specified on the plans. Firmly rod and water-in the backfill so that no air pockets remain. Apply a sufficient quantity of water immediately upon planting to thoroughly moisten all of the backfilled earth. Keep plants in a moistened condition for the duration of the planting period.

When so directed, form a water ring 6 inches in width to make a water collecting basin with an inside diameter equal to the diameter of the excavated hole. Maintain the water ring in an acceptable condition.

**580-4.4 Special Bed Preparation:** Where multiple or mass plantings are to be made in extended bedding areas, and the plans specify Special Bed Preparation, prepare the planting beds as follows:

Remove all vegetation from within the area of the planting bed and excavate the surface soil to a depth of 6 inches. Backfill the excavated area with peat, sand, finish soil layer material or other material to the elevation of the original surface. Till the entire area to provide a loose, friable mixture to a depth of at least 8 inches. Level the bed only slightly above the adjacent ground level. Then mulch the entire bedding area, in accordance with 580-8.

### **580-5 Staking and Guying.**

**580-5.1 General:** When specified in the plans, or as directed by the Engineer, stake plants in accordance with the following.

Use wide plastic, rubber or other flexible strapping materials to support the tree to stakes or ground anchors that will give as the tree moves in any direction up to 30 degrees. Do not use rope or wire through a hose. Use guy chords, hose or any other thin bracing or anchorage material which has a minimum 12 inches length of high visibility flagging tape secured to guys, midway between the tree and stakes for safety.

Stake trees larger than 1 inch diameter and smaller than 2 inches diameter with a 2 by 2 inch stake, set at least 2 feet in the ground and extending to the crown of the plant. Firmly fasten the plant to the stake with flexible strapping materials as noted above.

**580-5.2 Trees of 2 to 3 1/2 inches [50 to 90 mm] Caliper:** Stake all trees, other than palm trees, larger than 2 inches caliper and smaller than 3 1/2 inches caliper with two 2 by 4 inch stakes, 8 feet long, set 2 feet in the ground. Place the tree midway between the stakes and hold it firmly in place by flexible strapping materials as noted above.

**580-5.3 Large Trees:** Guy all trees, other than palm trees, larger than 3 1/2 inches caliper, from at least three points, with flexible strapping materials as noted above.

Anchor flexible strapping to 2 by 4 by 24 inch stakes, driven into the ground such that the top of the stake is at least 3 inches below the finished ground.

**580-5.4 Special Requirements for Palm Trees:** Brace palms which are to be staked with three 2 by 4 inch wood braces, toe-nailed to cleats which are securely banded at two points to the palm, at a point one third the height of the trunk. Pad the trunk with five layers of burlap under the cleats. Place braces approximately 120 degrees apart and secure them underground by 2 by 4 by 12 inch stake pads.

### **580-6 Tree Protection and Root Barriers.**

Install tree barricades when called for in the Contract Documents or by the Engineer to protect existing trees from damage during project construction. Place barricades at the drip line of the tree foliage or as far from the base of the tree trunk as possible. Barricades shall be able to withstand bumps by heavy equipment and trucks. Maintain barricades in good condition.

When called for in the Contract Documents, install root barriers or fabrics in accordance with the details shown.

### **580-7 Pruning.**

Prune all broken or damaged roots and limbs in accordance with established arboriculture practices. When pruning is completed ensure that all remaining wood is alive. Do not reduce the size or quality of the plant below the minimum specified.

### **580-8 Mulching.**

Uniformly apply mulch material, consisting of wood chips (no Cypress Mulch is allowed), pine straw, compost, or other suitable material approved by the Engineer, to a minimum loose thickness of 3 inches over the entire area of the backfilled hole or bed within two days after the planting. Maintain the mulch continuously in place until the time of final inspection.

### **580-9 Disposal of Surplus Materials and Debris.**

Dispose of surplus excavated material from plant holes by scattering or otherwise as might be directed so that it is not readily visible or conspicuous to the passing motorist or pedestrian. Remove all

debris and other objectionable material from the site and clean up the entire area and leave it in neat condition.

**580-10 Contractor's Responsibility for Condition of the Plantings.**

Ensure that the plants are kept watered, that the staking and guying is kept adjusted as necessary, that all planting areas and beds are kept free of weeds and undesirable plant growth and that the plants are maintained so that they are healthy, vigorous, and undamaged at the time of acceptance.

**580-11 Plant Establishment Period.**

If the Contract Documents designate a Plant Establishment Period, assume responsibility for the proper maintenance, survival and condition of all landscape items during such period at no additional cost.

**580-12 Method of Measurement.**

The quantities to be paid for will be the items shown in the plans, completed and accepted.

**580-13 Basis of Payment.**

Prices and payments will be full compensation for all work specified in this Section.

**Section 5**  
**Davis-Bacon**  
**Prevailing**  
**Wage Chart**

# DAVIS-BACON PREVAILING WAGE CHART

General Decision Number: **FL160221 01/08/2016 FL221**

Superseded General Decision Number: FL20150221

State: Florida

Construction Type: Highway

County: Miami-Dade County in Florida.

## HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the 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 \$10.15 (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 2016. The EO minimum wage rate will be adjusted annually. 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  
0

Publication Date  
01/08/2016

\* ELEC0349-002 09/01/2014

	Rates	Fringes
ELECTRICIAN.....	\$ 30.11	10.06

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SUFL2013-039 08/19/2013

	Rates	Fringes
CARPENTER.....	\$ 17.84	0.00
CEMENT MASON/CONCRETE FINISHER, Includes Form Work.....	\$ 15.49	0.00
FENCE ERECTOR.....	\$ 12.82	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 15.07	0.00

HIGHWAY/PARKING LOT STRIPING: Painter.....	\$ 12.13	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Spray Nozzleman).....	\$ 11.16	0.00
INSTALLER - GUARDRAIL.....	\$ 13.43	0.00
IRONWORKER, ORNAMENTAL.....	\$ 13.48	0.00
IRONWORKER, REINFORCING.....	\$ 18.43	0.00
IRONWORKER, STRUCTURAL.....	\$ 16.42	0.00
LABORER (Traffic Control Specialist incl. placing of cones/barricades/barrels - Setter, Mover, Sweeper).....	\$ 11.59	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 12.31	0.00
LABORER: Common or General.....	\$ 10.69	0.00
LABORER: Flagger.....	\$ 12.53	0.00
LABORER: Grade Checker.....	\$ 12.41	0.00
LABORER: Landscape & Irrigation.....	\$ 9.02	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 13.91	3.50
LABORER: Pipelayer.....	\$ 15.02	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 16.24	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 12.88	0.00
OPERATOR: Boom.....	\$ 18.95	0.00
OPERATOR: Boring Machine.....	\$ 15.29	0.00
OPERATOR: Broom/Sweeper.....	\$ 13.01	0.00

OPERATOR: Bulldozer.....	\$ 16.77	0.00
OPERATOR: Concrete Finishing Machine.....	\$ 15.44	0.00
OPERATOR: Concrete Saw.....	\$ 14.43	0.00
OPERATOR: Crane.....	\$ 22.46	0.00
OPERATOR: Curb Machine.....	\$ 20.74	0.00
OPERATOR: Distributor.....	\$ 13.29	0.00
OPERATOR: Drill.....	\$ 14.78	0.00
OPERATOR: Forklift.....	\$ 16.32	0.00
OPERATOR: Gradall.....	\$ 14.71	0.00
OPERATOR: Grader/Blade.....	\$ 20.22	3.85
OPERATOR: Loader.....	\$ 15.53	0.00
OPERATOR: Mechanic.....	\$ 18.03	0.00
OPERATOR: Milling Machine.....	\$ 14.67	0.00
OPERATOR: Oiler.....	\$ 16.32	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 13.61	0.00
OPERATOR: Piledriver.....	\$ 17.23	0.00
OPERATOR: Post Driver (Guardrail/Fences).....	\$ 14.45	0.00
OPERATOR: Roller.....	\$ 13.67	0.00
OPERATOR: Scraper.....	\$ 12.01	0.00
OPERATOR: Screed.....	\$ 14.15	0.00
OPERATOR: Tractor.....	\$ 12.19	0.00
OPERATOR: Trencher.....	\$ 14.74	0.00
PAINTER: Spray.....	\$ 16.52	0.00

SIGN ERECTOR.....	\$ 12.96	0.00
TRAFFIC SIGNALIZATION: Traffic Signal Installation.....	\$ 19.07	0.00
TRUCK DRIVER: Distributor Truck.....	\$ 14.96	2.17
TRUCK DRIVER: Dump Truck.....	\$ 12.19	0.00
TRUCK DRIVER: Flatbed Truck.....	\$ 14.28	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 15.07	0.00
TRUCK DRIVER: Slurry Truck.....	\$ 11.96	0.00
TRUCK DRIVER: Vactor Truck.....	\$ 14.21	0.00
TRUCK DRIVER: Water Truck.....	\$ 13.17	1.60

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

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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 request 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

**Section 6**  
**FDOT**  
**Documents**  
**Lists and**  
**Contractor**  
**Reporting**  
**Forms**

CONTRACTOR'S FORMS AND REPORTS

FDOT PROJECT #FM416766-2 Providing access to the Curtiss Mansion as a trailhead

FORMS AVAILABLE AT <http://www.dot.state.fl.us/proceduraldocuments/>

REQUIRED FROM CONTRACTOR AND SUBCONTRACTORS

<u>Number and name of Form</u>	<u>When Needed</u>
N/A Change in Federal Law Regarding Certified Payrolls	Informational only
N/A Directions for Completing Wage and Hour Form	Informational only
275-021-05 Record of Supervisory and Office Personnel EEO meeting or Individual Orientation	Once at beginning
275-021-13 Notification to FDOT of EEO Officer	Once at beginning
275-030-11B Disadvantage Business Enterprise Affirmative Action Plan	Once at beginning
700-010-11 Notice of Rental Agreements	as needed
700-010-13 Daily Report of Construction	Daily
700-010-36 Certification of Sublet Work	Once at beginning
700-010-69 Wage & Hour Record	Weekly or Bi-Weekly
700-011-13 Compliance of Equal Opportunity Provisions on Federal Aid Contracts	Once at beginning
Approved EEO Policy on Company Letterhead	Prior to construction

CITY OF MIAMI SPRINGS FORMS

525-010-47 Local Agency Program Record of Final Plans and Documentation	At completion
700-010-63 Employees Interview Form- Labor /EEO	as needed

Notifications of noncompliance (payroll violations) are issued for payrolls which have errors, are not consistent with interview reports, or show inadequate payment of employees.

### 6.5.15 Directions for Completing Wage and Hour Form (700-010-69)

This form includes four pages: Statement of Compliance, Wage and Hour Record, Deductions Record, and Fringe Benefit Record. Computer generated payrolls should follow these same guidelines.

#### Directions for Completing the Statement of Compliance

Date	Record the date this record is being submitted
Name:	Name and title of person signing the Certification
Contractor;	Name of the company for which the employee works
Building or Work	Identification of the project (the FDOT contract number)
Payroll Period	Day and month /year pay period begins Day and month/year pay period ends
Contractor	Name of the company for which the employee works
Description of Deductions	Each deduction listed on the payroll should be listed in this area (the four blank lines after and described below), however, a phrase such as "see attached payroll for deductions" is recommended in lieu of listing each one separately.
Box 4a, b, c	Complete these boxes only if the wage determination (WD) for this project indicates a fringe payment amount for classifications.
Remarks	Include any data deemed appropriate
Name & Title	Name and title of person signing the Certification
Signature	The person's signature

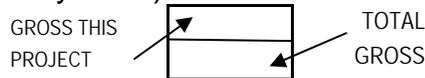
#### Directions for completing Wage and Hour Record

- Column 1. All payroll records submitted shall contain the employees first and last names. On contracts let on or after Jan. 19, 2009, the employee's address is not reported and a 4 digit employee identifier should be recorded instead of their nine digit social security number.
- Column 2. This column is for withholding exemptions, Race, and Gender.
- Column 3. Classification: Record the classification as it appears on the wage determination (WD) or on the Additional Wage Rate Request for the specific project. Semi-skilled laborer, helper, or operator (without designation of which type) cannot be used. If the classification listed on the payroll is not exactly as it appears on the WD, the contractor may submit a signed letter to clarify and to correlate the payroll classification to the WD.
- Column 4. Hours worked by day of week. Overtime hours are to be listed on the upper row, straight-time hours are to be listed on the lower row.

Column 5. Total Hours Worked on FDOT Project (shown separately for overtime and straight-time).

Column 6. Rate Paid – Indicate the hourly pay rate for overtime on upper row and straight-time on lower row. Check the rate paid for the work classification against the wage determinations for the specific contract.

Column 7. Gross Amount Earned. On the top section, record the employee’s gross earnings on this project. On the bottom section, record the employee’s total gross earnings this pay period (includes this project, other FDOT projects and any other)



Column 8. Deductions: Deductions other than FICA or withholding taxes *must be* identified. The amount of each and every deduction shall be listed along with its description, including those not requiring USDOL authorization. (See Deductions Section 6.5.4).

Column 9 Net wages paid for week.

**Directions for completing the Deductions Record**

Record the contractor’s name, address, payroll number, pay period ending date, contract number, financial project number and project description/county.

Employee Name (last, first): Record the employee’ name as it appears on the ‘Wage and Hour Record

Type a ‘deduction description’ in each box and then record the amount of that deduction for each employee or leave blank. Do not mix deductions and benefits on the same form. Example

Employee’s Name	Loan	Uniforms	Medical-individual		Total Deductions Amount
Adams, Juan		\$8.00			\$8.00
Beser, Louis	\$25.00	\$8.00	\$34.00		\$67.00

**Directions for completing the Fringe Benefits Record**

Record the contractor’s name, address, payroll number, pay period ending date, contract number, financial project number and project description/county.

Employee Name (last, first): Record the employee’ name as it appears on the ‘Wage and Hour Record

Type a ‘Fringe Benefit description’ in each box and then record the amount of that Fringe Benefit for each employee or leave blank. Do not mix deductions and benefits on the same form.



## Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

Office of Construction  
605 Suwannee Street MS-31  
Tallahassee, FL 32399-0450 Tel. 850-414-4150 Fax 850-412-8021

STEPHANIE KOPELOUSOS  
SECRETARY

April 7, 2009

**DCE MEMORANDUM 06-09**  
(FHWA Approved: April 6, 2009)

**TO:** DISTRICT CONSTRUCTION ENGINEERS

**FROM:** David A. Sadler, Director, Office of Construction 

**COPIES:** Bob Burleson, Chris Richter (FHWA), Paul Steinman

**SUBJECT:** CHANGE IN FEDERAL LAW REGARDING SUBMISSION OF CERTIFIED PAYROLLS

On December 19, 2008, the Federal Register announced a change to the reporting requirements under the Davis-Bacon and Copeland Acts. This change specified that certified payrolls submitted in conjunction with Federal-aid projects shall not include full social security numbers and addresses of the employees included on the report. This change only applies to contracts let after January 18, 2009.

Under the Department's contracts, the payroll reporting requirements for Federal-aid jobs is invoked through Special Provision 7-1.1. This Special Provision mandates compliance with the FHWA-1273, a compendium of Federal contract requirements. The FHWA-1273 has not yet been changed, and the requirements included in Section V, 2) b) of that document indicate that full social security numbers are to be reported.

To achieve compliance with the revised regulations contained in 29 CFR 3.5, all contracts let on or after January 18, 2009 should be amended through supplemental agreement to specify that full social security numbers and addresses are not to be reported on certified payrolls. A unique identifying number is to be used to associate each employee to their full information, which the employer must continue to maintain. The last four digits of the social security number may be used for this purpose, or an employer internal number may be used. Contracts let prior to January 18, 2009 are not affected and certified payrolls for those contracts are required to include full social security numbers and addresses.

This memorandum serves as blanket approval to process this \$0.00 change and should be attached to the Work Order or Supplemental Agreement.

Any questions regarding this matter should be directed to Kim Smith, Prevailing Wage Rate Coordinator at (850) 414-4492.

DS/sw

# PROPOSAL RATE FORM

## REQUEST FOR PROPOSAL (RFP) #07-15/16 CURTISS MANSION SITE IMPROVEMENTS -

### BIKE LANE SIDEWALK PROVIDING ACCESS TO THE CURTISS MANSION AS A TRAILHEAD

Company Name: \_\_\_\_\_

This project in part will be federally assisted through the State of Florida Department of Transportation funds and as such bidder **must** comply with Executive Order 11246, as amended; by Executive Order 11375; Title VI of the Civil Rights Act of 1964 as amended; the Davis Bacon Act of 1968, as amended; the Copeland Anti-Kickback Act; the Contract Work Hours and Safety Standards Act and all other applicable federal, state and local ordinance.

Note that bidder is required to pay workers on this project the minimum wages as determined in the Wage Determination Decision included in the Bidder's package; and that the contractor **must** ensure that employees are not discriminated because of race, color, religion, sex or national origin.

Item #	Description	Unit Price	Unit Multiplier	Total
<b>Site Improvements</b>				
1	Project General Conditions			
2	Mobilization			
3	MOT and Temporary Fencing			
4	Cleaning, grubbing and Site Demolition			
5	Earthwork			
6	Exfiltration Trench			
7	Inlets			
8	Pollution Retardant Baffles			
9	Asphalt			

10	Pavers			
11	Sidewalk 4" w/base			
12	Sidewalk 6" reinf. w/base			
13	Type D Curb			
14	Striping and signage			
15	Light Pole Foundations			
16	Riser			
17	Light Poles			
18	Conduit			
19	Landscaping (Plant material)			
20	Irrigation			
21	Misc.			
		<b>TOTAL BID PRICE</b>		<b>\$</b>