



# INVITATION FOR BID

**IFB No. 31-11-12**

## **Winson Water Treatment Plant Phase 1 - Filter Rehabilitation**

**RESPONSES ARE DUE NO LATER THAN**

**Tuesday, July 31, 2012 at 3:00 PM (Local Time)**

**AT**

**CITY OF NORTH MIAMI  
OFFICE OF THE CITY CLERK  
CITY HALL, 1<sup>ST</sup> FLOOR  
776 NE 125<sup>TH</sup> STREET  
NORTH MIAMI, FL 33161-4116**

The responsibility for submitting a response to this solicitation to the Office of the City Clerk on or before the stated time and date will be solely and strictly the responsibility of the Proposer. The City of North Miami will in no way be responsible for delays caused by the United States mail delivery or causes by any other occurrence.

Copies of this IFB Document may be obtained by contacting DemandStar by Oniva at [www.demandstar.com](http://www.demandstar.com) or calling toll free 1-800-711-1712 and request Document No. 31-11-12

Contact Person: Ruby C. Johnson  
Email: [rcrenshaw@northmiamifl.gov](mailto:rcrenshaw@northmiamifl.gov) | Phone: (305) 895-9886 | Fax: (305) 895-1015



## INVITATION FOR BID

The City of North Miami is requesting sealed bids from State of Florida Certified General Contractors and Certified Underground Contractors to complete the filter rehabilitation at the Winson Water Treatment Plant. The project components include the replacement of filter media, surface wash agitator system, under drain system and pipe gallery for existing Filters Nos. 1 through 4, including refurbishment and waterproofing of filter interiors for leak suppression, with all ancillary accessories.

The General Conditions of this Invitation to Bid fall under the guidelines of F.S. Section 403.8532 – State Assisted Water Projects and Florida Department of Environmental Protection Bureau of Water Facilities Funding Supplementary Conditions.

The City further seeks a contractor that is a willing participant in the City's goal to develop subcontracting and employment opportunities to local businesses and residents as defined by Section 7-151 of the City Code.

The Successful Bidder will be required to submit, a Community Benefits Plan for approval by the City Manager. The Community Benefit plan shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the Code. The successful Bidder's Community Benefits Plan shall be incorporated into and shall become a part of the agreement entered into between the City and the selected Bidder.

### **BID SUBMISSION**

Please submit an original bid, one (1) CD and three (3) copies in response to this Invitation for Bid (IFB). Bids are to be submitted in a sealed envelope bearing the name of the Proposer, and the address as well as the title of the IFB no later than 3:00 P.M. local time **Tuesday, July 31, 2012** at which time they will be opened and read in the Council Chambers by the Purchasing Director. Bids received after this time will not be considered and no time extensions will be permitted. Address your proposal to City of North Miami, Office of the City Clerk, 776 N E 125<sup>th</sup> Street, North Miami, Florida 33161. Please clearly mark bids:

**IFB # 31-11-12**  
**Phase 1 – Filter Rehabilitation**  
**Winson Water Treatment Plant**

A 10% Bid Bond and a Performance Bond is a requirement of this bid.

The City's tentative schedule for this Invitation to Bid is as follows:

|                                      |                                    |
|--------------------------------------|------------------------------------|
| <b>Advertisement Date:</b>           | <b>Monday, June 25, 2012</b>       |
| <b>Opening of Bids:</b>              | <b>Tuesday, July 31, 2012</b>      |
| <b>Mandatory Pre Bid Conference:</b> | <b>Tuesday, July 10, 2012</b>      |
| <b>Cut- off Date for Questions:</b>  | <b>Thursday, July 26, 2012</b>     |
| <b>Bid Review:</b>                   | <b>August 1, – August 10, 2012</b> |
| <b>Award / Council Approval:</b>     | <b>TBD</b>                         |

The City reserves the right to delay or modify scheduled dates and will notify Bidders of all changes in scheduled dates.

Copies of this Bid Document may be obtained by contacting DemandStar by Oniva at [www.demandstar.com](http://www.demandstar.com) or calling toll free 1-800-711-1712 and request Document # 31-11-12 or may be purchased for a non-refundable fee of \$200.00 from the Purchasing Department, 776 NE 125th Street, North Miami, Florida 33161.

**PRE BID CONFERENCE**

A mandatory pre-bid conference will be held on **Tuesday, July 10, 2012 at 10:00 a.m.** at the Winson Water Treatment Plant located at 12098 NW 11<sup>th</sup> Avenue, North Miami, Florida.

**FOR INFORMATION**

For information on this Invitation for Bid, contact the Purchasing Department, (305) 893-6511 ext. 12131.

**ACCEPTANCE AND REJECTIONS**

The City of North Miami reserves the right to reject any or all bids with or without cause; to waive any or all irregularities with regard to the specifications and to make the award to the firm offering the greatest advantage to the City.

Please be advised that the Bid(s) are issued subject to the City of North Miami Code Section 2-312 prohibiting certain communications with the City as completely specified in General Conditions of the Bid(s).

We look forward to your active participation in this solicitation.

Sincerely,

*Ruby C. Johnson*

Ruby C. Johnson, CPPO  
Procurement Director

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- END OF TOC -

## **SECTION 1.0 SPECIAL CONDITIONS**

### **1.1 PURPOSE**

The purpose of this Invitation for Bid is to establish a contract, by means of sealed bids, for the furnishing of all labor, equipment, materials and expertise as required to complete the filter rehabilitation at the Winson Water Treatment Plant (WTP) located at 12098 NW 11th Avenue, North Miami, Florida, 33168. Project Substantial Completion shall be achieved within 290 calendar days of Notice to Proceed, with Final Completion shall be achieved within 320 calendar days from the Notice to Proceed.

### **1.2 BIDDER QUALIFICATIONS**

In order for bids to be considered, Bidders must submit with their bid, evidence that they are qualified to satisfactorily perform the specified work. Failure to meet these requirements may render the Bid non-responsive. Evidence shall include all information necessary to certify that the Bidder:

- a. is a State of Florida Certified General Contractor and Certified Underground Contractor (CUC License);
- b. must have a minimum of five (5) years experience as General Contractor;
- c. must submit a reference list with a minimum of four (4) potable water treatment facility filter rehabilitation projects on which it has performed as the lead contractor (minimum 8 mgd capacity facilities) in the past eight (8) years. Project shall specifically relate to filter underdrain and media replacement;
- d. maintains a permanent place of business;
- e. must be able to perform 50% of the work as a minimum with its own forces;
- f. has available the organization and qualified manpower to do the work;
- g. has adequate financial status to meet the financial obligations to perform the work.

### **1.3 METHOD OF AWARD**

Award of this bid may be made to the lowest responsive, responsible Bidder whose bid, qualifications and references demonstrates to be the most advantageous to the City of North Miami.

The City reserves the right to award to more than one Bidder.

### **1.4 COMPLETION TIME TERM OF CONTRACT**

A contract shall be executed after award by the City of North Miami, Florida.

Project Substantial Completion shall be achieved within 290 calendar days of Notice to Proceed, with Final Completion shall be achieved within 320 calendar days from the Notice to Proceed.

The City seeks a source of supply that will provide accurate and timely service. The awarded Bidder must adhere to a construction schedule. If, in the opinion of the Public Works Director, the successful Bidder fails at any time to meet the requirements herein, then the contract may be terminated upon written notice.

### **1.5 ADDITIONS/DELETIONS OF FACILITIES**

Although this solicitation identifies specific facilities/areas to be serviced, it is hereby agreed and understood that additional facilities may be added/deleted to/for, this contract at the option of the City.

**1.6 PRICES SHALL BE FIXED AND FIRM FOR TERM OF CONTRACT**

If the Bidder is awarded a contract under this bid solicitation, the prices quoted by the Bidder on the Bid Form shall remain fixed and firm during the term of this contract; provided, however, that the Bid may offer incentive discounts from this fixed price to the City at any time during the contractual term.

**1.7 PRE-BID CONFERENCE**

A mandatory Pre-Bid conference will be held on **Tuesday, July, 2012 at 10:00 a.m.** at the Winson Water Treatment Plant located at 12098 NW 11<sup>th</sup> Avenue, North Miami, Florida.

**1.8 SITE INSPECTION**

Prior to submitting the bid, Bidder is required to visit the site of the proposed work and to become familiar with any conditions which may in any manner, affect the work to be done or affect the equipment, materials and labor required. The Bidder is also required to examine carefully the specifications and be thoroughly informed regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract. No additional allowances will be made because of lack of knowledge of these conditions.

**1.9 INSURANCE**

Bidders must submit with their bid, proof of insurance meeting or exceeding the following requirements or a letter of intent to provide the following requirements if awarded the contract:

- Worker's Compensation Insurance – as required by law
- Employer's Liability Insurance - \$1,000,000 per occurrence
- Commercial General Liability Insurance - \$1,000,000 per person and \$1,000,000 per accident for bodily injury (occurrence based policy form preferred). This coverage shall include premises, operations, independent contractors, products-completed operations, personal & advertising injury and liability assumed under an insured contract.
- Professional Liability - \$1,000,000
- Business Automobile Liability Insurance (covering owned, non-owned & hired vehicles) - \$500,000 per occurrence, \$500,000 per accident for bodily injury and \$500,000 per accident for property damage

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.

The City of North Miami shall be endorsed as an additional insured under the Commercial General Liability and Business Automobile Liability. The contractor will be responsible for paying on behalf of the additional insured any deductible or self insured retention. All policies must be endorsed to provide notice of cancellation to the City.

The successful Bidder(s) must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance evidencing required coverage including “additional insured” designation to the City of North Miami.

**1.10 CONTACT PERSON**

For any additional information regarding the specifications and requirements of this bid, contact: Ruby Johnson via facsimile to (305) 891-1015 or email at [rcrenshaw@northmiamifl.gov](mailto:rcrenshaw@northmiamifl.gov).

**1.11 BID CLARIFICATION**

Any questions or clarifications concerning this Bid shall be submitted in writing by mail, facsimile or email to the Purchasing Department, 776 N.E. 125th Street, North Miami, Florida 33161, Fax: (305) 891-1015. The bid title/number shall be referenced on all correspondence. All questions must be received no later than **Thursday, July 26, 2012**. All responses to questions/clarifications will be sent to all prospective Bidders in the form of an addendum. **NO QUESTIONS WILL BE RECEIVED VERBALLY OR AFTER SAID DEADLINE.**

**1.12 FAILURE TO PERFORM**

If in the opinion of the City's representative, the Bidder refuses to begin work, improperly perform said work, or shall neglect or refuse to take out or rebuild such work, as shall have been rejected or as being defective or unsuitable, then City's representative may notify the Bidder to repair and replace work immediately or discontinue all work under this Contract.

If at any time the City's representative shall be of the opinion that the said work is being unnecessarily delayed and will not be finished within the prescribed time then City's representative may notify the Bidder to discontinue all work under this Contract. The Bidder shall immediately respect said notice and stop said work and cease to have any rights in the possession of the ground and shall forfeit this contract.

The City may thereupon look to the next lowest and responsive and responsible Bidder to complete the work or advertise for bids and let a contract for the uncompleted work in the same manner as was followed in the letting of this Contract and charge the cost thereof to the original Bidder upon his contract. Any excess cost arising there from over and above the original contract price shall be charged to the Bidder.

**1.13 BID/PERFORMANCE/PAYMENT BOND**

All bids must be accompanied by a bid bond in the amount of 10% of the total bid submitted, to be in the form of a Cashier's Check, made payable to the City of North Miami; a bond written by a surety company authorized to do business in the State of Florida and shall comply with State Statute 287.0935. The bond, if in the form of a Cashier's Check, of all unsuccessful Bidders will be returned after bid award.

The successful Bidder will be required to furnish to the City of North Miami, a Performance Bond and Payment Bond for 100% of the total bid submitted, to be in the form of a Cashier's Check, made payable to the City of North Miami; a bond written by a

surety company authorized to do business in the State of Florida and shall comply with State Statute 287.0935; or an Irrevocable Letter of Credit. If the latter is chosen, it must be written on a bank located Miami-Dade County, be in the amount of the contract and should clearly and expressly state that it cannot be revoked until express written approval has been given by the City of North Miami. The City, to draw on same, would merely have to give written notice to the bank with a copy to the successful Bidder.

**1.14 LIQUIDATED DAMAGES**

If the successful Bidder(s) fails to complete the work within three hundred and twenty (320) consecutive calendar days, it is understood that \$350.00 per consecutive calendar day will be deducted, as liquidated damages, for each day beyond the specified completion time. The City may, in lieu of the above, notify the Bidder to cease work and the City will complete the work. The cost of completion thereof to the City including all materials, rent, labor, equipment and necessary supervision plus 15% for overhead, shall be deducted from the contract consideration and shall be an obligation of the Bidder.

**1.15 CONDITIONS OF WORK**

If property (public or private) is damaged performing work specified or is removed for the convenience of the work, it shall be repaired or replaced at the expense of the Bidder in a manner acceptable to the City of North Miami. Such property shall include but not limited to: roads, driveways (whether concrete or asphalt), approaches (whether concrete or asphalt), sod, walls, fences, water features, footings, underground utilities, shrubs, trees, etc.

Bidder shall submit to the Public Works Department for review, pictures or video of the work site(s) having pre-existing damage to roadways, driveways, approaches, sod, swales, adjacent improvements, etc. before beginning work. Failure to do so shall obligate the Bidder to make repairs per above paragraph.

Bidder shall notify the Parks and Recreation Department of any pre-existing damage to tree trunks or limbs before beginning work. Failure to do so shall obligate the Bidder for tree removal, and canopy replacement as per Miami Dade County codes, ordinances and or resolutions.

**1.16 PROTECTION**

Bidder shall be solely responsible for pedestrian and vehicular safety and control within the work site and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection and warning to persons and vehicular traffic within the area. All safety devices must have suitable and sufficient lighting for the prevention of accidents. All minimum safety standards required by Municipal, County, State and Federal ordinances and laws shall be strictly met by the Bidder.

**1.17 HOURS OF WORK**

Bidder will perform work Monday through Friday from 7:30 a.m. to 5:00 p.m., excluding holidays unless prior approval is given by the City unless otherwise allowed for in the contract documents. Hours beyond those allotted must be requested in writing and approved by the City of North Miami.

Bidder shall be responsible for the appearance of all working personnel assigned to the project (clean and appropriately dressed at all times). Personnel must be able to supply proper identification at all times.

All employees of the Bidder shall be considered to be at all times the sole employees of the contractor, under the Bidder's sole direction, and not an employee or agent of the City of North Miami. The Bidder shall supply competent and physically capable employees and the City may require the Bidder to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on City property is not in the best interest of the City. City shall not have any duty to implement or enforce such requirements.

Bidder shall assign an "On Duty" supervisor who speaks and reads English.

**1.18 WARRANTY**

The successful Bidder will be required to warranty all work performed for a minimum of one (1) year.

**1.19 PERMITS**

Bidder shall obtain all necessary permits. As to the City, the City will waive its permit fee, but is required to collect the \$.60/\$1,000 Miami-Dade county surcharge fee. Work to be performed is located on a County maintained road and Bidder must obtain permits from the County and other authorities having jurisdiction.

Bidder shall verify all locations of underground utilities with Sunshine One Call, Peoples Gas, Southern Bell, TCI cable, etc. prior to any work.

All work not stated herein shall be in compliance with the Florida Building Code and all other national, state, and local codes and regulations. All permits to be posted on job site.

All inspections shall be requested a minimum of twenty-four (24) hours prior to inspection.

**1.20 PRODUCT INFORMATION**

All Bidders must submit product information on the items they propose to furnish on this bid if different from products specified. Any bid not containing this information may be rejected for that reason.

**1.21 EQUAL PRODUCT, MANUFACTURER'S PRODUCT**

Where equal is proposed, bid must be accompanied by complete product information sheet. The City shall be the sole judge of the acceptability of the product in conformance with the Bid Specifications and its decision shall be final.

**1.22 REFERENCES AND SUB-CONTRACTORS**

Each bid must be accompanied by a list of four (4) references with a minimum of four (4) potable water treatment facility filter rehabilitation projects on which it has performed as the lead Contractor (minimum 8 mgd capacity facilities) in the past eight (8) years. Project shall specifically relate to filter underdrain and media replacement. Failure to meet this requirement may render the Bid unresponsive.

References shall include the name of the company, a contact person and the telephone number. (See Form A-14) **NO BID WILL BE CONSIDERED WITHOUT THIS LIST.** It is the responsibility of the Bidder to ascertain that the contact person will be responsive.

Bidders must also complete a Statement of Experience of Bidders and complete Form A-6 - Proposer's Disclosure of Subcontractors and Suppliers" and return with Bid package.

**1.23 COMPLETE PROJECT REQUIRED**

These specifications describe the various items or classes of work required, enumerating or defining the extent of same necessary, but failure to list any items or classes under scope of the several sections shall not relieve the Bidder from furnishing, installing or performing such work where required by any part of these specifications, or necessary to the satisfactory completion of the project.

**1.24 BID SUBMITTAL / ADDENDUMS**

All bids submitted shall include the completed Bid Form and all required product information and any other items as indicated on the Bid Form. Bids will be considered "Non-Responsive" if the required information is not submitted by the date and time specified.

Before submitting bid, each Bidder shall make all investigations and examinations necessary to ascertain if any addendums were issued by the Purchasing Agent.

**1.25 LATE BIDS**

The City of North Miami cannot accept bids received after opening time and encourages early submittal. Late submittals will be returned to the bidder unopened.

**1.26 EXCEPTIONS TO SPECIFICATIONS**

Exceptions to the specifications shall be listed on the Bid Form and shall reference the section. Any exceptions to the General or Special Conditions shall be cause for the bid to be considered non-responsive.

**1.27 BID FORMAT**

To be considered a valid bid, Bidders must provide the original, one (1) CD and three (3) copies of the Bid and Bid Form must be filled in completely in a sealed envelope in the following format:

- Section 1 Bidder's Qualifications (See Section 1.2)
- Section 2 Required Forms
  - A-1 Public Entity Crimes
  - A-2 Non-Collusive Certificate
  - A-3 Local Preference Certification
  - A-4 Questionnaire
  - A-5 Acknowledgement of Addenda
  - A-6 Proposer's Disclosure of Subcontractors and Suppliers
  - A-7 Insurance Requirements
  - A-9 Bid Bond
  - A-10 Performance Bond (required at time of award)
  - A-14 References
- Section 3 Price Proposal (See Bid Form)

All of our forms can now be found on our website at:

<http://www.northmiamifl.gov/business/purchasing/forms.asp>.

**1.28 COMMUNITY BENEFITS PLAN**

The Successful Bidder will be required to submit, a Community Benefits Plan for approval by the City Manager. The Community Benefit plan shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the Code. The Successful Bidder will be required to document their experience and track record in delivering to a municipality, county or other local government agency a Community Benefits Plan. The Successful Bidder shall be required to demonstrate and provide to the City a proposed Community Benefit Plan which has identifiable and observable benefit to the community within the City. Bidders are encouraged to be creative in the development of a Community Benefit Plan and the types of benefits their plan is designed to provide. The City Manager, as the City's Chief Executive Officer, shall approve the final Community Benefits Plan proposed by the successful Bidder, as a precondition to the execution of any agreement. The Successful Bidder's Community Benefits Plan shall be incorporated into and shall become a part of the agreement entered into between the City and the selected Bidder.

**End of Section 1**

## **SECTION 2.0 SCOPE OF WORK**

### **2.1 SCOPE OF WORK**

The Work of the Contract shall be performed at the City of North Miami Winson Water Treatment Plant (WTP), a fully operational water treatment facility that is the principal source of potable water supply to the City of North Miami. Project components generally include the replacement of filter media, surface wash agitator system, underdrain system and pipe gallery for existing Filters Nos. 1 through 4, including refurbishment and waterproofing of filter interiors for leak suppression, with all ancillary accessories as detailed in the Contract Documents entitled "City of North Miami Public Works Utilities Winson Water Treatment Plant Bid Package 1: Filter Rehabilitation, dated May 2012.

The project is located at the Winson Water Treatment Plant 12098 NW 11<sup>th</sup> Avenue, North Miami, Florida, 33168. The Work set forth within the referenced bid documents include the furnishing of all labor, materials, equipment, services and incidentals, including all associated piping, electrical work, control systems, and all appurtenant work, complete, tested and ready for operation. Project Substantial Completion shall be achieved within 290 calendar days of Notice to Proceed, with Final Completion shall be achieved within 320 calendar days from the Notice to Proceed.

END OF SECTION 2.0

**SECTION 3.0  
BID FORM**

The prices listed in the bid form shall include the total cost to complete the work including but not limited to materials, labor, equipment, bonds, insurances, etc, as necessary to ensure proper delivery of services and product requested by the City of North Miami.

| Item No. | Estimated Quantity | Description   | Total                |
|----------|--------------------|---|----------------------|
| 1        | Lump Sum           | <u>Mobilization:</u> Included in this item are all mobilization activities, including but not limited to bonds, scheduling, temporary facilities and all other activities necessary to prepare to complete the contract work, for the lump sum price of:<br><br>_____ Dollars and<br>_____ Cents  | \$ _____             |
|          |                    |   |                      |
| 2        | Lump Sum           | <u>Filter System Rehabilitation:</u> For the complete furnishing and installation of all general, structural, mechanical, instrumentation, electrical and appurtenant work required for the rehabilitation of the existing filter installation in accordance with the Contract Documents. complete with all appurtenances for the lump sum price of<br><br>_____ Dollars and<br>_____ Cents | \$ _____             |
|          |                    |   |                      |
| 3        | Allowance          | <u>Allowance for Water Purchases from Other Utilities:</u> For the Owner to purchase water from Miami-Dade County during filter shutdown periods as specified in the Section entitled "Summary of Work"<br><br>_____ Nine Hundred Thousand _____ Dollars and<br>_____ Zero _____ Cents  | <u>\$ 900,000.00</u> |
|          |                    |   |                      |
| 4        | Allowance          | <u>Additional Work Directed by the Owner:</u> Included in this item is an allowance for implementing additional Work directed by the Owner not otherwise included in Bid Item No. 2.<br><br>_____ One Hundred and Fifty Thousand _____ Dollars and<br>_____ Zero _____ Cents  | <u>\$ 150,000.00</u> |
|          |                    |   |                      |
| 5        | Lump Sum           | <u>Indemnification:</u> In recognition of Contractor's indemnification obligations under its agreement with the Owner.<br><br>_____ Dollars and<br>_____ Cents  | \$ _____             |

|   |           |   |                       |
|---|-----------|---|-----------------------|
|   |           |   |                       |
| 6 | Allowance | <u>Permit Fee Allowance:</u> Payment for permit fees will be based upon the actual permit fees required by the Contractor from the various agencies having jurisdiction for construction of the project.<br><u>Five Thousand</u> Dollars and<br><u>Zero</u> Cents | \$ <u>5,000.00</u>    |
|   |           |   |                       |
|   |           | <b>TOTAL FOR BID ITEMS 1 THROUGH 6:</b><br>_____<br>_____<br>(Written Dollar Amount)  | \$ _____<br>(Figures) |

Name: \_\_\_\_\_ (Please Print)

Offeror Signature \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**BID SUBMITTAL FOR:  
31-11-12**

FEIN NO. : \_\_\_\_/\_\_\_\_-\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_

(Bidder Federal Employer Identification Number) If none, Bidder Social Security Number.

- LOCAL PREFERENCE CERTIFICATION:** For the purpose of this certification, a "local business" is a business located within the limits of City of North Miami that conforms with the provisions of Section 5.62 of the General Terms and Conditions of this solicitation and contributes to the economic development of the community in a verifiable and measurable way. Place a check here only if affirming bidder meets requirements for Local Preference. **Failure to complete this certification at this time (by checking the box above) shall render the Bidder ineligible for Local Preference.**

**OR**

- WORKFORCE LOCAL PREFERENCE CERTIFICATION:** The local preference may be applied to firms with a least ten percent (10%) of its total workforce residing within the geographical boundaries of the City. Place a check here only if affirming bidder meets the requirements for workforce Local Preference. **Failure to complete this certification at this time (by checking the box above) shall render the Bidder ineligible for Workforce Local Preference.**

**OR**

- SUBCONTRACTOR LOCAL PREFERENCE CERTIFICATION:** The local preference may be applied to firms that subcontract at least ten percent (10%) of the contractual amount of a City project to subcontractor who are physically located within the City of North Miami. **(Must complete forms A-3a Statement of Intent & A-3b Participation Schedule.)** Place a check here only if affirming bidder meets the requirements for Subcontractor Local Preference. **Failure to complete this certification at this time (by checking the box above) shall render the Bidder ineligible for Subcontractor Local Preference.**

All referenced forms can be found on the City's website at:

<http://www.northmiamifl.gov/departments/purchasing/forms.asp>

The undersigned bidder certifies that this bid is submitted in accordance with the bid specifications and conditions governing this bid, and that the bidder will accept any award(s) made to him as a result of this bid.

FIRM NAME: \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_

CITY/STATE/ZIP CODE \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_

E-MAIL \_\_\_\_\_

***By signing this document the bidder agrees to all Terms and Conditions of this Solicitation and the resulting Contract.***

AUTHORIZED SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

PERSON AUTHORIZED TO ENTER INTO CONTRACTUAL AGREEMENT

PRINT NAME OF AFFIANT \_\_\_\_\_

TITLE OF OFFICER \_\_\_\_\_

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF BIDDER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE BIDDER TO THE TERMS OF ITS OFFER.

**End of Section 3**

## **SECTION 4.0 CONTRACT FORMS**

All of our forms can now be found on our website at:  
<http://www.northmiamifl.gov/business/purchasing/forms.asp>.

These forms are fill –in forms. Please ensure to include all applicable forms with your bid. All documents must be signed and notarized as required. Emailed forms will not be accepted.

The following forms are required for this bid document:

- A-1 Public Entity Crimes
- A-2 Non-Collusive Certificate
- A-3 Local Preference Certification (If applicable)
- A-4 Questionnaire
- A-5 Acknowledgement of Addenda
- A-6 Proposer's Disclosure of Subcontractors and Suppliers
- A-7 Insurance Requirements
- A-9 Bid Bond
- A-10 Performance Bond (Required at time of Award)
- A-14 References

**SECTION 5.0  
CITY OF NORTH MIAMI  
GENERAL TERMS & CONDITIONS**

**5.1 CITY OVERVIEW**

North Miami, Florida (pop.60, 000) is a diverse community, ideally located midway between Miami and Fort Lauderdale and encompasses approximately 9.5 square miles. As the fifth largest city of Miami-Dade County, North Miami is committed to growth in its business community, while also focusing on issues such as education, the arts, leisure activities and sustainability to provide a viable future for our residents and preserve the City's rich history since its incorporation in 1926.

The City currently has 550+ employees and provides a wide range of governmental services including public safety / police services, parks and recreation, public works, water and sewer, planning, building and zoning, code enforcement, and community development to its citizens.

The City is a very large consumer of goods and services and the purchasing decisions of our employees and contractors can positively or negatively affect the environment. By including environmental considerations in our procurement decisions, along with our traditional concerns with price, performance and availability, we will remain fiscally responsible while promoting practices that improve public health and safety, reduce pollution, and conserve natural resources.

**5.2 DEFINITIONS**

The following terms, phrases, words and their derivations shall have the meaning given herein:

- a) **'Award'** means the acceptance of a bid, offer, or proposal by the City, pursuant to code.
- b) **'Awarded Bidder'** or **'Contractor'** means the Bidder or Bidders that receive any award of contract from the City as a result of this 'Invitation to Bid'
- c) **'Bidder'** means the person firm, entity or organization submitting a bid in response to this Invitation to Bid.
- d) **'Solicitation'** means an Invitation to Bid, Request for Proposal, Request for Quotation or any document used to obtain bids and proposals for the purposes of entering into a contract.
- e) **'Work', 'Services', 'Program', 'Project',** or **'Engagement'** to mean all matters and things

that will require to be done by the Awarded Bidder(s) in accordance with the scope of work and all terms and conditions of this Invitation to Bid.

**5.3 INVITATION**

This Invitation for Bid is extended to firms and organizations that can provide the requirement(s) specified herein. The requirements presented in this Invitation for Bid represent the City's anticipated needs.

**5.4 PUBLIC ENTITY CRIME/ DISCRIMINATORY VENDOR LIST**

The *Public Entity Crime Affidavit Form, (Form "A-1")* attached to this Invitation for Bid, includes documentation that shall be executed by an individual authorized to bind the Bidder. Any Bidder, or any of its suppliers, subcontractors, or consultants who shall provide goods and services which are intended to benefit the City, shall not be a convicted vendor or included on the discriminatory vendor list. If the Bidder or any affiliate of the Bidder has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months must have passed since that person was placed on the convicted vendor or discriminatory vendor list. The Bidder further understands and accepts that any contract issued as a result of this Invitation for Bid shall be either voidable or subject to immediate termination by the City. In the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The City in the event in such termination, shall not incur any liability to the Bidder for any goods, services or materials furnished.

**5.5 LOBBYING**

All Bidders, their agents and proposed sub consultants or subcontractors, are hereby placed on notice that neither the City Council Members, any evaluation committee members, employees of the City or employees of any other project sponsoring agencies shall be lobbied either individually or collectively regarding this Invitation for Bid. Bidders, their agents and proposed sub-consultants or subcontractors are hereby placed on notice that they are prohibited from contacting any of these individuals for any purpose relating to the Invitation for Bid (e.g., general information, meetings of introduction, meals, etc.). Any bid submitted by a

Bidder, its agents and potential sub consultants or subcontractors who violate these guidelines will not be considered for review. The Purchasing Director or Contract Specialist (identified on the cover page of this Invitation for Bid) shall be the only point of contact for questions and/or clarifications concerning the Invitation for Bid, the selection process and the negotiation and award procedures.

#### **5.6 SUSPENSION OF CONTRACTORS FOR MATERIAL BREACH OF CITY CONTRACTS**

Pursuant to Sec 7-160 (a), (b) & (c) upon recommendation by the Director of Purchasing may temporarily or permanently suspend contractors from doing business with the city whenever a contractor materially breaches its contract with the City. Any Bid submitted by a Bidder, its proposed subcontractors or sub consultants who are included on the City's Suspension List shall not be considered for review.

In addition, the principles of any Bidders or its proposed subcontractors or sub consultants shall not attempt to do business with the City under a different name or form a new legal entity in order to do business with the City while the principals of the Bidder or its proposed subcontractors or sub consultants remain on the Suspension List. In the event there is any intentional misrepresentation, the Bidder further understands and accepts that any contract issued as a result of this Invitation for Bid shall be subject to immediate termination for default and suspension procedures by the City. The City, in the event of such termination, shall not incur any liability to the Bidder for any goods, services or materials furnished.

#### **5.7 POINTS OF CONTACT/ TIMETABLE FOR INQUIRES**

Bidders shall contact the contract specialist, identified on the cover page of this Invitation for Bid, for all related inquiries. All Bidders' technical inquiries shall be confirmed in writing either through the mail, via facsimile transmission or electronic mail.

Technical questions will not be entertained beyond the cut-off date indicated on the cover page so that answers to substantive questions, in the form of written addenda, can be posted on the City's web site ([www.northmiamifl.gov](http://www.northmiamifl.gov)) and Demand Star by Onvia at [www.demandstar.com](http://www.demandstar.com) or calling toll free 1-

800-711-1712 and requesting the corresponding documents number.

#### **5.8 ORAL REPRESENTATION**

No oral representation made by the City staff shall be binding. The contents of this Invitation for Bid and any subsequent addenda issued by the City shall govern all aspects of this Invitation for Bid.

#### **5.9 ADDENDA**

If any revisions to the Invitation for Bid become necessary (other than changes to the deadline for Bid submission), the City will post written addenda on the City web's site at ([www.northmiamifl.gov](http://www.northmiamifl.gov)) and on Demand Star by Onvia at [www.demandstar.com](http://www.demandstar.com) or calling toll free 1-800-711-1712 and requesting the corresponding document number at least seven (7) calendar days before the date scheduled for opening the Bids. The City may revise the deadline for Bid submission at any time prior to the date and time scheduled for opening the Bids. **It is the responsibility of all Bidders to ascertain whether any addenda have been issued before the Invitation for Bid deadline by either calling or checking the City's web site ([www.northmiamifl.gov](http://www.northmiamifl.gov)) and Demand Star and by Onvia at [www.demandstar.com](http://www.demandstar.com) or calling toll free 1-800-711-1712 and requesting the corresponding document number. All addenda placed on the Demand Star can be down loaded.**

#### **5.10 CANCELLATION OF THE INVITATION FOR BID**

The City reserves the right to cancel this Invitation for Bid and/or re-advertise and re-solicit the requirements at any time when determined to be in the best interest of the city.

#### **5.11 BID PROTEST**

If a potential Bidder protest any provisions of the Invitation for Bid documents a written protest must be filed with the City Clerk within five (5) business days (excluding weekends and City observed holidays) prior to date set for opening of the bids. A written protest is considered filed when received by the City Clerk.

Any Bidder who files a formal written protest pursuant to Section 7-158 City Code, shall post with the city at the time of filing the formal written protest with the city at the time of filing the formal written protest a filing fee in an amount equal to one percent (1%) of the amount of the bid or proposed

contract, or one thousand dollars (\$1,000), whichever is less. Failure to file a notice of protest within the time prescribed in Section 7-158, City Code, or failure to post the filing fee within the time allowed, shall constitute a waiver of such Bidder's right to file a protest.

*Notice of written protest along with the filing fee, shall be timely filed with the City Clerk of the City North Miami at 776 NE 125<sup>th</sup> Street, 1<sup>st</sup> Floor North Miami, FL 33161. The City will not accept receipt of any formal written protests filed at any location other than the City's Clerk's Office*

#### **5.12 DEVELOPMENT COSTS**

Neither the City nor its representatives shall be liable for any expenses incurred in connection with the preparation, submission or presentation of a Bid in response to this Invitation for Bid. All information in the Bid shall be provided at no cost to the City.

#### **5.13 TAX EXEMPT STATUS**

The City is exempt from Florida Sales and Federal Excise taxes on direct purchase of tangible property.

#### **5.14 BID SUBMISSION AND OPENING**

All Bids shall be submitted in a sealed envelope by the deadline indicated on the cover page of this Invitation for Bid. The Bid shall identify the Bid number and title specified on the cover page of this Invitation for Bid. Reference information shall also be marked on the outside of the sealed envelope, including the Bidder's return address. The City assumes no responsibility for Bids not properly marked.

The City will not accept Bids delivered after the established deadline. If the Bid is delivered after the established deadline, a Bidder shall be deemed non-responsive to the Invitation for Bid requirements.

Receipts of a Bid by any City office, receptionist or personal other than the Clerk's Office will not constitute "delivery" as required by this Invitation for Bid. The City will not accept or consider Bids submitted via facsimile transmission. The public is welcome to attend the Bid opening.

#### **5.15 ASSIGNMENT OF BIDS**

A Bidder shall not transfer or assign its Bid to a third party following submission of a Bid to the City.

#### **5.16 WITHDRAWAL OF BID**

Bidders shall withdraw their submitted Bid by notifying the City either in writing or in person through an authorized representative at any time prior to the deadline. Individuals making the withdrawal shall provide evidence of serving as an authorized representative of the Bidder. Bids, once received, become the property of the City, and will not be returned to Bidders even when they are withdrawn from consideration.

Bids, once opened, shall not be withdrawn or modified except to the extent agreed to by the City during subsequent contract negotiation.

#### **5.17 PUBLIC RECORDS AND EXEMPTIONS**

Upon receipt, Bids become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Bidders shall invoke the exemptions to disclosure provided by law, in the Bid, by providing the specific statutory authority for the claimed exemption, identifying the data or other materials to be protected and stating the reasons why such exclusion from public disclosure is necessary. Bids will be made available for public inspection at the time the City posts notice of its decision or intended decision concerning contract awards, or ten (10) days after the Bid opening, whichever is earlier.

#### **5.18 REJECTION OF BIDS**

Pursuant to Section 7-136 of the City Code the City reserves the right to reject any and all Bids for reasons including, but not limited to, the following: (1) when such rejection is in the interests of the City; (2) if such Bid is deemed non-responsive; (3) if the Bidder is deemed non-responsible; or (4) if the Bid contains any materials irregularities. Minor irregularities contained in Bid will be waived by the City. A minor irregularity is a variation from the Invitation for Bid that does not affect the price of the contract nor does it give a Bidder an advantage or benefit not enjoyed by other Bidders and does not adversely impact the City.

#### **5.19 CONE OF SILENCE / CONFLICT OF INTEREST AND CODE OF ETHICS**

This Invitation for Bid is issued pursuant to the City of North Miami Code Section 7-193 which prohibits certain types of communications: (a) A Cone of Silence shall be imposed upon each Invitation for Bid after the advertisement of said Invitation for Bid. At

the time of imposition of the Cone of Silence, the director of the purchasing department or designee shall provide for public notice of the Cone of Silence. The director of the purchasing department shall issue a written notice thereof to the affected departments, file a copy of such a notice with the city clerk, with the copy thereof to each city council member, and shall include in any public solicitation for supplies or services a statement disclosing the requirements of this ordinance. Notwithstanding any other provision of this section, the imposition of a cone of silence on a particular Invitation for Bid shall not preclude purchasing staff from obtaining industry comment or performing market research provided all communication related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.

The ordinance does not apply to oral communications at pre-bid conference, oral presentations before selection committees, contract negotiations, public presentations made to the City Council during any duly noticed public meeting or communications in writing at any time with any City Council unless specifically prohibited by the applicable Invitation for Bid documents. A copy of all written communications must be filed with the City Clerk.

#### **5.20 BUSINESS ENTITY REGISTRATION**

The City of North Miami requires business entities to complete registration application before doing business with the City. Bidders need not register with the City to present a bid; however, the selected Bidder(s) must register prior to award of a contract as failure to register may result in the rejection of the bid. To register, contact the Purchasing Department at (305) 895-9886 or you may download the application (*revised 7/09*) from our website at [www.northmiamifl.gov](http://www.northmiamifl.gov) it is the responsibility of the business entity to update and renew its application concerning any changes such as new address, telephone number, commodities, etc. during the performance of any agreement obtained as a result of this Invitation for Bid.

#### **5.21 SEALED BIDS:**

Original copy of the Bid Form as well as any other pertinent documents must be returned in order for the Bid to be considered for award. All Bids are subject to the conditions specified herein and on the

attached Special Conditions, Specifications and Bid Form.

The completed Bid must be submitted in a sealed envelope clearly marked with the Bid Title to the Office of the City Clerk of North Miami, Room 12, City Hall, 776 N.E.125th Street, North Miami, Florida 33161-5216 until 3:00 p.m., local time on date due.

#### **5.22 EXECUTION OF BID:**

The Bid must contain a manual signature of an authorized representative in the space provided on the Bid Form. Failure to properly sign Bid shall invalidate same and it shall NOT be considered for award. All Bids must be completed in pen or be typewritten. No erasures are permitted. If a correction is necessary draw a single line through the entered figure and enter the corrected figure above it. Corrections must be initialed by the person signing the Bid. Any illegible entries, pencil bids or corrections not initialed will not be tabulated. The original Bid conditions and specifications CANNOT be changed or altered in any way after being submitted to the City.

#### **5.23 PRICES QUOTED:**

Deduct trade discounts and quote firm net prices. Give both unit price and extended total, when requested. Prices must be stated in units of quantity specified in the Bid specifications. In case of discrepancy in computing the amount of the bid, the UNIT PRICE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in special conditions). Award, if made, will be in accordance with terms and conditions stated herein. Each item must be proposed separately and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of Bid(s). All prices quoted shall be guaranteed for 60 days from bid date unless otherwise specified in Special Conditions.

#### **5.24 MISTAKES:**

Bidders are expected to examine the specifications, delivery schedules, bid prices and extensions and all instructions pertaining to supplies and services. Failure to do so will be at the Bidder's risk.

#### **5.25 UNDERWRITERS' LABORATORIES:**

Unless otherwise stipulated in the Bid, all manufactured items and fabricated assemblies shall be U.L. listed or re-examination listing where such has been established by U.L. for the item(s) offered and furnished.

**5.26 BID'S CONDITIONS:**

The City reserves the right to waive irregularities in Bids or to reject all Bids or any part of any Bid deemed necessary for the best interest of the City of North Miami, Florida.

**5.27 PRODUCTS, MATERIALS WITH RECYCLED CONTENT:**

It is the intent and policy of the City of North Miami, Florida, that the needs of the City for products and materials be made using recycled contents whenever possible. Bidders must certify in writing the percentage of recycled content in the product or material. "Recycled content" means materials that have been recycled that are contained in the products or materials to be procured, including, but not limited to, paper, aluminum, glass and composted material. The minimum percentage of recycled content shall be twenty-five (25) percent of materials recovered from post consumer waste. The term does not include internally generated scrap that is commonly used in industrial or manufactured processes or waste or scrap purchased from another manufacturer who manufactures the same or a closely related product. The City may allow up to ten (10) percent price difference to a responsible Bidder who has certified in writing the above recycled content.

**5.28 EQUIVALENTS:**

If Bidder offers makes of equipment or brands of supplies other than those specified, it must be indicated in the Bid. Specific article(s) of equipment/supplies shall conform in quality, design and construction with all published claims of the manufacturer.

Brand Names: Catalog numbers, manufacturers' and brand names, when listed, are informational guides as to a standard of acceptable product quality level only and should not be construed as an endorsement or a product limitation of recognized and legitimate manufacturers. Bidders shall formally substantiate and verify that product(s) offered conform with or exceed quality as listed in the specifications.

Bidder shall indicate on the Bid Form the manufacturers' name and number if proposing other than the specified brands, and shall indicate ANY deviation from the specifications as listed. **Other than specified items offered requires complete descriptive technical literature marked to indicate detail(s) conformance with specifications and must be included with the Bid. No bids will be considered without this data.**

Lacking any written indication of intent to quote an alternate brand or model number, the Bid will be considered as a Bid in complete compliance with the specifications as listed on the attached form.

**5.29 NON-CONFORMANCE TO CONTRACT CONDITIONS:**

Items may be tested for compliance with specifications. Any item delivered, not conforming to specifications, may be rejected and returned at Bidder's expense. These items and items not delivered as per delivery date in Bid and/or purchase order may be purchased on the open market. Any increase in cost may be charged against the Bidder. Any violation of these stipulations may also result in Bidder's Name being removed from the vendor list.

**5.30 SAMPLES:**

Samples of items, when required, must be furnished free of expense and, if not destroyed, will, upon request, be returned at the Bidder's expense. Bidders will be responsible for the removal of all samples furnished within (30) days after Bid opening. All samples will be disposed of after thirty (30) days. Each individual sample must be labeled with Bidder's name. Failure of Bidder to either deliver required samples or to clearly identify samples may be reason for rejection of the bid. Unless otherwise indicated, samples should be delivered to the Purchasing Department, 776 N.E. 125th Street, North Miami, Florida 33161.

**5.31 DELIVERY:**

Unless actual date of delivery is specified (or if specified delivery cannot be met), show number of days (in calendar days) required to make delivery after receipt of purchase order, in space provided. Delivery time may become a basis for making an Award. Delivery shall be within the normal working hours of the City, Monday through Friday, excluding holidays.

**5.32 INTERPRETATIONS:**

Unless otherwise stated in the Bid, any questions concerning conditions and specifications should be submitted in writing to the Purchasing Director, 776 N.E. 125th Street, North Miami, FL 33161, facsimile or email.

**5.33 BID OPENING:**

Bids shall be opened and publicly read in the Council Chambers, 776 N.E. 125th Street, North Miami, Florida 33161 on the date and at the time specified on the Bid Form. All bids received after that time shall be returned, unopened.

**5.34 INSPECTION, ACCEPTANCE & TITLE:**

Inspection and acceptance will be destination unless otherwise provided. Title to/or risk of loss or damage to all items shall be the responsibility of the successful Bidder until acceptance by the City unless loss or damage result from negligence by the City. If the materials or services supplied to the City are found to be defective or not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return product at Bidder's expense.

**5.35 PAYMENT:**

Payment will be made by the City after the items awarded to a Bidder have been received, inspected, and found to comply with award specifications, free of damage or defect and properly invoiced. The City of North Miami complies with Florida Statue 218.70, Florida Prompt Payment Act. Prompt payment is made within forty-five (45) days of date on which proper invoicing is received for goods and services and twenty (20) business days for construction services.

**5.36 DISPUTES:**

In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of the City shall be final and binding on both parties.

**5.37 LEGAL REQUIREMENTS:**

Federal, State, County and City laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Bidder will in no way be a cause for relief from responsibility.

The individual executing this Bid on behalf of the Company warrant to the City that the Company is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Company possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to provide the goods or perform the services herein described.

**5.38 PATENTS & ROYALTIES:**

The Bidder, without exception, shall indemnify and save harmless the City of North Miami, Florida and its employees from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by The City of North Miami, Florida. If the Bidder uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the Bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in providing the required goods or services.

**5.39 OSHA:**

The Bidder warrants that the product and services supplied to the City of North Miami, Florida shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be considered as a breach of contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely by the Bidder responsible for same.

**5.40 SPECIAL CONDITIONS:**

Any and all Special Conditions that may vary from these General Conditions shall have precedence.

**5.41 ANTI-DISCRIMINATION:**

The Bidder certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

**5.42 INSURANCE:**

Bidders are required assume the full duty, obligation and expense of obtaining all necessary licenses,

permits and insurance and assure all work complies with all Dade County and City of North Miami building requirements and the South Florida Building Code. The Bidder shall be liable for any damages or loss to the City occasioned by negligence of the Bidder (or agent) or any person the Bidder has designated in the completion of the contract as a result of the Bid.

**5.43 BID BONDS, PERFORMANCE BONDS, CERTIFICATES OF INSURANCE:**

Bid Bonds, when required, shall be submitted with the bid in the amount specified in Special Conditions. After acceptance of Bid, the City will notify the successful Bidder to submit a performance bond and certificate of insurance in the amount specified in Special Conditions.

**5.44 DEFAULT/FAILURE TO PERFORM:**

The City shall be the sole judge of nonperformance, which shall include any failure on the part of the successful Bidder to accept the Award, to furnish required documents, and/or to fulfill any portion of this contract within the time stipulated.

Upon default by the successful Bidder to meet any terms of this agreement, the City will notify the Bidder five (5) days (weekends and holidays excluded) to remedy the default. Failure on the contractor's part to correct the default within the required five (5) days shall result in the contract being terminated and upon the City notifying in writing the contractor of its intentions and the effective date of the termination. The following shall constitute default:

- a) Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities and personnel as identified and set forth, and to the degree specified in the contract.
- b) Failure to begin the work under this Bid within the time specified.
- c) Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely completion.
- d) Neglecting or refusing to remove materials or perform new work where prior work has been rejected as non conforming with the terms of the contract.
- e) Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful

- Bidder incapable of performing the work in accordance with and as required by the contract.
- f) Failure to comply with any of the terms of the contract in any material respect.

In the event of default of a contract, the successful Bidder shall pay all attorney's fees and court costs incurred in collecting any damages. The successful Bidder shall pay the City for any and all costs incurred in ensuing the completion of the project.

**5.45 BILLING INSTRUCTIONS:**

Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted in DUPLICATE to the City of North Miami, 776 N.E. 125th Street, North Miami, Florida 33161.

**5.46 SUBSTITUTIONS:**

The City of North Miami, Florida WILL NOT accept substitute shipments of any kind. Bidder(s) is expected to furnish the brand quoted in their bid once awarded. Any substitute shipments will be returned at the Bidder's expense.

**5.47 FACILITIES:**

The City reserves the right to inspect the Bidder's facilities at any time with prior notice.

**5.48 BID TABULATIONS:**

Bidders desiring a copy of the bid tabulation may request same by enclosing a self-addressed stamped envelope with the bid or may visit the City's website to view bid tabulations at [www.northmiamifl.gov](http://www.northmiamifl.gov) or Demand Star at [www.demandstar.com](http://www.demandstar.com)

**5.49 APPLICABLE LAW AND VENUE:**

The law of the State of Florida shall govern the contract between the City of North Miami and the successful Bidder and any action shall be brought in Miami-Dade County, Florida.

**5.50 CLARIFICATION AND ADDENDA TO BID SPECIFICATIONS:**

If any person contemplating submitting a Bid under this Invitation for Bid is in doubt as to the true meaning of the specifications or other Bid documents or any part thereof, the Bidder must submit to the City of North Miami Purchasing Director at least seven (7) calendar days prior to scheduled Bid opening, a request for clarification.

All such requests for clarification must be made in writing and the person submitting the request will be responsible for its timely delivery.

Any interpretation of the Bid, if made, will be made only by Addendum duly issued by the City of North Miami Purchasing Director. The City shall issue an Informational Addendum if clarification or minimal changes are required. The City shall issue a Formal Addendum if substantial changes which impact the technical submission of Bids are required. A copy of such Addendum will be emailed to each Bidder receiving the Invitation for Bid. In the event of conflict with the original Contract Documents, Addendum shall govern all other Contract Documents to the extent specified. Subsequent addendum shall govern over prior addendum only to the extent specified.

**5.51 AWARD OF CONTRACT:**

- A. A contract may be awarded to the lowest responsive, responsible Bidder(s) whose Bid(s), conforming to the Invitation for Bid, is most advantageous to the City of North Miami. The lowest responsive, responsible Bidder(s) will be determined in conjunction with the method of award which is described in the Special Conditions. Tie bids will be decided as described in Special Conditions.
- B. The City shall award a contract to a Bidder through action taken by the City Council or the City Manager of the City of North Miami, Florida.
- C. The General Terms and Conditions, the Special Conditions, the Technical Specification, and the Bidder's Bid are collectively and integral part of the contract between the City of North Miami and the successful Bidder.
- D. While the City of North Miami may determine to award a contract to a Bidder(s) under this Invitation for Bid, said Award may be conditional on the subsequent submission of other documents as specified in the Special Conditions. The Bidder shall be in default of any conditional award if any of these documents are not submitted in a timely manner and in the form required by the City. If the Bidder is in default, the City, through the Purchasing Director, will void its acceptance of

the Bidder's offer and may determine to select the second lowest responsive, responsible Bidder or re-solicit Bids. The City may, at its sole option, seek monetary restitution from the defaulting Bidder as a result of damages or excess costs sustained and/or may prohibit the Bidder from submitting future Bids for a period of one year.

- E. The City reserves the right to exercise the option to renew a term contract of any successful Bidder(s) to a subsequent optional period; provided that such option is stipulated in the Special Conditions and is contained in any contract ultimately awarded in regard to this bid.
- F. The City reserves the right to automatically extend any contract for a maximum period not to exceed ninety (90) calendar days in order to provide City departments with continual service and supplies while a new contract is being solicited, evaluated and/or awarded, provided this is expressly made a part of any contract awarded in regard to this bid.

**5.52 ASSIGNMENT:**

The Bidder shall not assign, transfer, convey, or otherwise dispose of any contract, including 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 of North Miami.

**5.53 LAWS, PERMITS AND REGULATIONS:**

The Bidder shall obtain and pay all licenses, permits and inspection fees as may be required; and shall comply with all laws, ordinances, regulations, building code requirements applicable to the goods or services contemplated herein.

**5.54 OPTIONAL CONTRACT USAGE:**

Other State agencies, and/or Governmental Entities in the State of Florida may purchase from the resulting contract, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Bidders shall sell these commodities or services certified by the Division to the other State agencies and/or Governmental Entities in the State of Florida at the agencies' and/or entities option.

**5.55 SPOT MARKET PURCHASES:**

It is the intent of the City to purchase the goods or services specifically listed in this bid from the selected Bidder. However, items that are to be "Spot Market Purchased" may be purchased by other methods, i.e. Federal, State or local contracts.

**5.56 INCENTIVES/DISINCENTIVES:**

The City of North Miami has EXCLUDED incentive/disincentive for early completion provisions in the contract. Liquidated damages may apply for untimely delivery of goods or services.

**5.57 NON-COLLUSION:**

By submitting this bid, Bidder certifies that this offer is made without prior understanding, agreement, or connection with any corporation, firm or person submitting an offer for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

No premiums, rebates or gratuities are permitted, either with, prior to or after any delivery of material or provision of services. Any violation of this provision may result in the Contract cancellation, return of materials or discontinuation of services and the possible removal from the vendor bid list(s).

**5.58 FLORIDA PUBLIC RECORDS ACT:**

All material submitted regarding this bid becomes the property of the City. Bids may be reviewed by any person ten (10) days after the public opening. Bidders should take special note of this as it relates to any proprietary information that might be included in their offer.

Any resulting contract may be reviewed by any person after the contract has been executed by the City. The City has the right to use any or all information/material submitted in response to this bid and/or any resulting contract from same. Disqualification of a Bidder does not eliminate this right.

**5.59 CONVICT PRODUCED MATERIAL**

Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

1. Produced by convicts who are on parole, supervised release, or probation from a prison or;

2. Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987. Qualified prison facility means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.[53 FR 1923, Jan. 25, 1988, as amended at 58 FR 38975, July 21, 1993] Item 26. Public Agencies in Competition (e) except in the case of a concession agreement, as defined in section 710.703 of this title, no public agency shall be permitted to bid in competition or to enter into subcontracts with private Bidders.

**5.60 PROJECT RECORDS**

City shall have the right to inspect and copy, at City's expense, the books and records and accounts of the awarded Bidder which relate in any way to the Project, and to any claim for additional compensation made by the Bidder, and to conduct an audit of the financial and accounting records of the Bidder which relate to the Project and to any claim for additional compensation made by the Bidder. Bidder shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following final completion of the Project. During the Project and the three (3) year period following final completion of the Project, the Bidder shall provide City access to its books and records upon seventy-two (72) hours written notice.

**5.61 STANDARDIZED CHANGES**

Contract documents shall be modified to reflect the requirements of 23 CFR 635.109. The changed conditions contract clauses shall be made part of, and incorporated in this project which has been approved under 23 U.S.C. 106.

**5.62 LOCAL PREFERENCE / 10% TOTAL WORKFORCE CONSISTING OF NORTH MIAMI RESIDENTS**

The evaluation of competitive bids is subject to Section 7-151 of the City Code which, except where contrary to federal and state law, or any other

funding source requirements, provides that preference be given to local businesses. To satisfy this requirement, the Bidder shall affirm in writing its compliance with either of the following objective criteria as of the Bid submission date stated in the Invitation for Bid. A local business shall be defined as:

- a) A business that has a valid local business tax receipt, issued by City of North Miami at least one year prior to bid submission, that is appropriate for the goods, services or construction to be purchased; or
- b) A business that has a physical business address located within the limits of the City of North Miami from which the vendor operates or performs business. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address; or
- c) A business has at least ten percent (10%) of its total workforce residing in the city prior to the city's issuance of the solicitation for supplies or services; or
- d) A business that subcontracts at least ten percent (10%) of the contractual amount of a City project to subcontractors who are physically located within the City of North Miami.

The preference is applied during the evaluation process. Bids received from local businesses are assigned a preference of ten (10) percent of the total price. **(See Form A-3, A-3a & A-3b)**

#### **5.63 COMMUNITY BENEFITS PLAN**

The Successful Bidder or Proposer will be required to submit, a Community Benefits Plan for approval by the City Manager. The Community Benefit plan shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the Code. The Successful Bidders/Proposers will be required to document their experience and track record in delivering to a municipality, county or other local government agency a Community Benefits Plan. The Successful Bidder/Proposer shall be required to demonstrate and provide to the City a proposed Community Benefit Plan which has identifiable and observable benefit to the community within the City. Bidders/Proposers are

encouraged to be creative in the development of a Community Benefit Plan and the types of benefits their plan is designed to provide. The City Manager, as the City's Chief Executive Officer, shall approve the final Community Benefits Plan proposed by the successful Bidder/Proposer, as a precondition to the execution of any agreement. The successful Bidder's/Proposer's Community Benefits Plan shall be incorporated into and shall become a part of the agreement entered into between the City and the selected Bidder/Proposer.

#### **5.64 NON-EXCLUSIVITY**

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

#### **5.65 TERMINATION FOR CONVENIENCE**

The City, at its sole discretion, reserves the right to terminate this contract without cause upon thirty (30) days written notice. Upon receipt of such notice, the successful bidder(s) shall not incur any additional costs under this contract. The City shall be liable only for reasonable costs incurred by the successful Bidder(s) prior to the notice of termination. The City shall be the sole judge of "reasonable costs".

## **END OF CITY OF NORTH MIAMI GENERAL TERMS AND CONDITIONS**





**The following documents follow:**

- **Attachment A**  
**Florida Statute Section 403.8532**  
**State Assisted Water Projects**
- **Attachment B**  
**Florida Department of Environmental**  
**Protection**  
**Supplementary Conditions**
- **Attachment C - Technical Specifications**  
**City of North Miami Public Works Utilities**  
**Winson Water Treatment Plant Bid Package 1:**  
**Filter Rehabilitation, dated May 2012**

GENERAL CONDITIONS  
FOR  
STATE ASSISTED WATER PROJECTS  
UNDER  
SECTION 403.8532, FLORIDA STATUTES

## GENERAL CONDITIONS

### ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1. Acceptance: By the OWNER of the Work as being fully complete in accordance with the Contract Documents.
2. Agreement: The written agreement between the OWNER and the CONTRACTOR covering the Work to be performed; the Contract Documents are attached to and made a part of the Agreement. Also designated as the Contract.
3. Addenda: Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, Drawings and Specifications, by addition, deletions, clarifications or corrections.
4. Application for Payment: The form furnished by the ENGINEER which is to be used by the CONTRACTOR in requesting progress payments and an affidavit of the CONTRACTOR that progress payments theretofore received from the OWNER on account of the Work have been applied by the CONTRACTOR to discharge in full all of the CONTRACTOR'S obligations stated in prior Applications for Payment.
5. Approval: Accept as satisfactory.
6. Bid: The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
7. Bidder: Any person, firm or corporation submitting a Bid for the Work.
8. Bonds: Bid, performance and payment bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the Contract Documents and in accordance with the law of the location of the project.
9. Change Order: A written order to the CONTRACTOR signed by the OWNER authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.
10. Contract Documents: Advertisement for Bids, Information for Bidders, the Bid, the Bonds, the Agreement, the Notice of Award, the Notice to Proceed, the Change Order, these General Conditions, the Florida Department of Environmental Protection Supplementary Conditions, and the Technical Specifications.
11. Contract Price: The total moneys payable to the CONTRACTOR under the Contract Documents.

12. Contract Time: The number of calendar days stated in the Agreement for the completion of the Work.
13. Contracting Officer: The OWNER or the Individual who is authorized to sign the Contract Documents on behalf of the owner's governing body.
14. Contractor: The person, firm or corporation with whom the OWNER has executed the Agreement.
15. Day: A calendar day of twenty-four (24) hours measured from midnight to the next midnight.
16. Drawings: The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the ENGINEER and referred to in the Contract Documents.
17. Engineer: The person, firm or corporation named as such in the Contract Documents.
18. Field Order: A written order issued by the ENGINEER which clarifies or interprets the Contract Documents in accordance with paragraph 9.3 or orders minor changes in the Work in accordance with paragraph 10.2.
19. Modification: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by the ENGINEER in accordance with paragraph 9.3 or (d) a written order for a minor change or alteration in the Work issued by the ENGINEER pursuant to paragraph 10.2. A modification may only be issued after the execution of the Agreement.
20. Notice of Award: The written notice by the OWNER to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, OWNER will execute and deliver the Agreement to him.
21. Notice to Proceed: A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents.
22. Owner: A public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed.
23. Project: The entire construction to be performed as provided in the Contract Documents.
24. Resident Project Representative: An authorized representative of the ENGINEER assigned to observe the Work performed and materials furnished by the CONTRACTOR or such other person as may be appointed by the OWNER as his representative. The CONTRACTOR shall be notified in writing of the identity of this representative.
25. Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a Subcontractor, manufacturer, supplier or

distributor and which illustrate the equipment, material or some portion of the Work and as required by the Contract Documents.

26. Samples: Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
27. 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.
28. 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 at the Project site.
29. Substantial Completion: The stage in construction when a Project can be utilized for the purposes for which it was intended. At substantial completion, minor items and items that are seasonally restricted need not be completed, but the items that affect operational integrity and function of the facility must be capable of continuous use.
30. Supplementary Conditions: FDEP Supplementary Conditions in effect at time of submission of Bid.
31. Supplier: Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
32. Surety: The corporate body that is bound with the CONTRACTOR and which engages to be responsible for the CONTRACTOR and his acceptable performance of the Work.
33. Work: Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by CONTRACTOR under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.
34. Written Notice: The term "Notice" as used herein shall mean and include all written notices, demands, instructions, claims, approvals, and disapproval required to obtain compliance with Contract requirements. Written notice shall be deemed to have been duly served 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 to an authorized representative of such individual, firm or corporation, or if delivered at or sent by registered mail to the last business address known to him who gives the notice. Unless otherwise stated in writing, any notice to or demand upon the OWNER under this Contract shall be delivered to the OWNER through the ENGINEER.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.1 Award:

The award of the Contract, if it is awarded, will be to the lowest responsible, responsive Bidder. No Notice of Award will be given until the OWNER has concluded such investigations as he deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to do the Work in accordance with the Contract Documents to the satisfaction of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER'S satisfaction. In analyzing Bids, the OWNER may take into consideration alternates and unit prices, if requested by the Bid forms. If the Contract is awarded, the OWNER will issue the Notice of Award and give the successful Bidder a contract for execution within sixty (60) days after the opening of Bids.

### 2.2 Execution of Agreement:

At least three (3) counterparts of the Agreement and such other Contract Documents will be executed and delivered by CONTRACTOR to the OWNER within ten (10) working days or fifteen (15) calendar days of receipt from the OWNER.

### 2.3 Forfeiture of Bid Security:

Failure of the successful Bidder to execute and deliver the Agreement and deliver the required Bonds as stipulated in paragraph 2.2 shall be just cause for the OWNER to annul the Notice of Award and declare the Bid and any security therefore forfeited.

### 2.4 Contractor's Pre-Start Representations:

CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that he has correlated his study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents.

### 2.5 Commencement of Contract Time:

The Contract Time will commence to run no less than the fifteen (15) days after receipt by the CONTRACTOR of the Notice to Proceed.

### 2.6 Starting the Project:

CONTRACTOR shall start to perform his obligations under the Contract Documents on the date when the Contract Time commences to run. No Work shall be done at the site prior to

the date on which the Contract Time commences to run, except with the written consent of the OWNER.

#### 2.7 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. He shall at once report in writing to ENGINEER any conflict, error or discrepancy which he may discover; however, he shall not be liable to OWNER or ENGINEER for his failure to discover any conflict, error or discrepancy in the Drawings or Specifications.

#### 2.8 Schedule of Completion:

Within ten (10) days after delivery of the Notice to Proceed by OWNER to CONTRACTOR, CONTRACTOR shall submit to ENGINEER an estimated progress schedule with earnings indicating the starting and completion dates of the various stages of the Work, and a preliminary schedule of Shop Drawing submissions. See paragraphs 6.12(a) through 6.12(e). The ENGINEER shall review and return this schedule or require revisions thereto within fourteen (14) days of its submittal. If there is more than one CONTRACTOR involved in the Project, the responsibility for coordinating the Work of all CONTRACTORS shall be as provided in the Contract Documents.

Within twenty (20) days after delivery of the executed Agreement by OWNER to CONTRACTOR, but before starting the Work at the site, a pre-construction conference will be held to review the above schedule, to establish procedures for handling Shop Drawings and other submissions and for processing Applications for Payment, and to establish a working understanding between the parties as to the Project. Present at the conference will be the OWNER or his representative, ENGINEER, Resident Project Representatives, CONTRACTOR and his Superintendent.

#### 2.9 Qualification of Subcontractors, Materialmen and Suppliers:

Within ten (10) working days after bid opening, the CONTRACTOR will (if required) submit to the OWNER and the ENGINEER for acceptance a list of the names of Subcontractors and such other persons and organizations (including those who are to furnish principal items of materials or equipment) proposed for those portions of the Work as to which the identity of the Subcontractors and other persons and organizations must be submitted as specified in the Contract Documents. Within thirty (30) working days after receiving the list, the ENGINEER will notify the CONTRACTOR in writing if either the OWNER or the ENGINEER, after due investigation, has reasonable objection to any Subcontractor, person or organization on such list. The failure of the OWNER or the ENGINEER to make objection to any Subcontractor, person or organization on the list within thirty (30) days of receipt shall constitute an acceptance of such Subcontractor, person or organization. Acceptance of any such Subcontractor, person or organization shall not constitute a waiver of any right of the OWNER or the ENGINEER to reject defective Work,

material or equipment, or Work, material or equipment not in conformance with the requirements of the Contract Documents.

## ARTICLE 3 – CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

### 3.1 Intent:

It is the intent of the Specifications and Drawings to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the OWNER and the CONTRACTOR. They may be altered only by a Modification.

### 3.2 Contract Documents:

The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall call it to ENGINEER'S attention in writing at once and before proceeding with the Work affected thereby; however, he shall not be liable to OWNER or ENGINEER for his failure to discover any conflict, error or discrepancy in the Specifications or Drawings. The various Contract Documents shall be given precedence, in case of conflict, error or discrepancy, as follows: Supplementary Conditions, Agreement Modifications, Addenda, Instructions to Bidders, General Conditions, Technical Specifications and Drawings. If the requirements of other Contract Documents are more stringent than of the Supplementary Conditions, the more stringent requirements shall apply.

### 3.3 Interpretation:

The words “furnish”, “furnish and install”, “install”, and “provide” or words with similar meaning shall be interpreted, unless otherwise specifically stated, to mean “furnish and install complete in place and ready for service”.

### 3.4 Miscellaneous Items and Accessories:

Miscellaneous items and accessories which are not specifically mentioned, but which are essential to produce a complete and properly operating installation, or usable structure or plant, providing the indicated function, shall be furnished and installed without change in the Contract Price. Such miscellaneous items and accessories shall be of the same quality standards, including material, style, finish, strength, class, weight and other applicable characteristics, as specified for the major component of which the miscellaneous items or accessory is and essential part, and shall be approved by the ENGINEER before installation. The above requirement is not intended to include major components not covered by or inferable from the Drawings and Specifications.

### 3.5 Work Coordination:

The Work of all trades under this Contract shall be coordinated by the CONTRACTOR in such a manner as to obtain the best workmanship possible for the entire Project, and all components of the Work shall be installed or erected in accordance with the best practices of the particular trade.

### 3.6 Manufacturer's Literature:

Manufacturer's literature, when referenced, shall be dated and numbered and is intended to establish the minimum requirements acceptable. Whenever reference is given to codes, or standard specifications or other data published by regulating agencies or accepted organizations, including but not limited to National Electrical Code, applicable State Building Code, Federal Specifications, ASTM Specifications, various institute specifications, and the like, it shall be understood that such reference is to the latest edition including addenda in effect on the date of Bid.

### 3.7 Brand Names:

Brand names where used in the technical specifications, are intended to denote the standard of quality and performance required of the particular material or product. The term "equal" or "equivalent", when used in connection with brand names, shall be interpreted to mean a material or product that is similar and equal in type, quality, size, capacity, composition, finish, color and other applicable characteristics to the material or product specified by trade name, and that is suitable for the same use and capable of performing the same function, in the opinion of the ENGINEER, as the material or product so specified. The ENGINEER must approve proposed equal items before they are purchased or incorporated in the Work.

ARTICLE 4 – AVAILABILITY OF LANDS; REFERENCE POINTS & SUBSURFACE TEST;  
SUBSURFACE CONDITIONS

4.1 Availability of Lands:

The OWNER will furnish, as indicated in the Contract Documents, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the OWNER, unless otherwise specified in the Contract Documents. Other access to such lands or rights-of-way for the CONTRACTOR'S convenience shall be the responsibility of the CONTRACTOR. The CONTRACTOR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Reference Points and Subsurface Tests:

The OWNER will, upon request, furnish to the BIDDERS copies of all available boundary surveys and subsurface tests at no additional cost.

4.3 Subsurface Conditions:

The CONTRACTOR acknowledges that he has investigated prior to bidding and satisfied himself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides, water tables or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The CONTRACTOR further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done on behalf of the OWNER on the site or any contiguous site, as well as information presented by the Drawings and Specifications made a part of this Contract, or any other information made available to him prior to receipt of Bids. Any failure by the CONTRACTOR to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The OWNER assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR on the basis of the information made available by the OWNER.

4.4 Differing Site Conditions:

- (a) The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the OWNER in writing of: (i) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (ii) unknown physical conditions at the site, or an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The OWNER shall promptly investigate the conditions, and if he finds that such

conditions do materially so differ and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- (b) No claim of the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the OWNER.
- (c) No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.1 Performance and Payment Bonds:

The CONTRACTOR'S attention is directed to the requirement for the CONTRACTOR to furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR obligations under these Contract Documents.

### 5.2 Contractor's Liability Insurance:

- (a) The CONTRACTOR shall provide the OWNER with copies of insurance certificates certifying that all required insurance is in force; and such insurance certificates shall include provisions that the insurance shall not be cancelled, allowed to expire or be materially changed without giving the OWNER advance notice by registered mail.
- (b) The CONTRACTOR agrees that if any part of the Work under the Contract is sublet, he will require the Subcontractor(s) to carry insurance as required, and that he will require the Subcontractor(s) to furnish to him insurance certificates similar to those required by the OWNER in 5.1, above.

### 5.3 Fire and Extended Coverage Insurance (Builders' Risk):

- (a) The CONTRACTOR shall maintain Insurance, in an insurance company or insurance companies acceptable to the OWNER, for Fire, Extended Coverage and Vandalism & Malicious Mischief on buildings and structures, while in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said buildings or structures. The policy or policies shall also cover machinery, if the cost of machinery is included in the Contract. The amount of insurance must at all times be at least equal to the actual cash value of the insured property. The interests may appear, and shall also cover the interests of all Subcontractors performing work.
- (b) The CONTRACTOR shall provide the OWNER with satisfactory evidence certifying that the foregoing insurance is in force; and such evidence shall include provisions that the insurance shall not be cancelled, allowed to expire or be materially changed without giving the OWNER advance notice by registered mail.

### 5.4 Cancellation and Re-Insurance:

If any insurance should be cancelled or changed by the insurance company or should any insurance expire during the period of this Contract, the CONTRACTOR shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain continuous coverage during the life of this Contract.

#### 5.5 Owner's Liability and Property Insurance:

In addition to the insurance required to be provided by CONTRACTOR under paragraphs 5.2 and 5.3, OWNER, at OWNER'S option, may purchase and maintain, at OWNER'S expense, OWNER'S own liability and property insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

### 6.1 Supervision and Superintendence:

The CONTRACTOR will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR’S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work. (Copies of written communications given to the Superintendent shall be mailed to the CONTRACTOR’S home office.)

### 6.2 Labor, Materials and Equipment:

- (a) The CONTRACTOR will provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order at the site.
- (b) The CONTRACTOR will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, local telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
- (c) All materials and equipment will be new, except as otherwise provided in the Contract Documents. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the site in their original packages or container with seals unbroken and labels intact.
- (d) All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

### 6.3 Materials, Equipment, Products, and Substitutions:

Materials, equipment and products incorporated in the Work must be approved for use before being purchased by the CONTRACTOR. The CONTRACTOR shall submit to the ENGINEER a list of proposed materials, equipment or products, together with such samples as may be necessary of him to determine their acceptability and obtain his approval within ninety (90) calendar days after Award of Contract unless otherwise stipulated in the Contract Documents. No request for payment for “or equal” equipment will be approved until this list has been received and approved by the ENGINEER.

- (a) Whenever a material, article or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient

requirements and that other products of equal capacities, quality and function shall be considered per 40 CFR 33.255(c) as referenced in Chapter 62-552, FAC. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents be reference to brand name or catalog number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the Contract Price or Contract Time.

- (b) No substitute shall be ordered or installed without the written approval of the ENGINEER who shall be the judge of equality.
- (c) Delay caused by obtaining approvals for substitute materials will not be considered justifiable grounds for an extension of construction time.
- (d) Should any work or materials, equipment or products not conform with requirements of the Drawings and Specifications or become damaged during the progress of the Work, such Work or materials shall be removed and replaced, together with any work disarranged by such alteration, at any time before completion and acceptance of the Project. All such work shall be done at the expense of the CONTRACTOR. See paragraph 7.10
- (e) No materials or supplies for the Work shall be purchased by the CONTRACTOR or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the Seller. The CONTRACTOR warrants that he has good title to all materials and supplies used by him in the Work.

#### 6.4 Concerning Subcontractors:

- (a) The CONTRACTOR will not employ any Subcontractor, other person or organization of the types referred to in paragraph 2.9 (whether initially or as a substitute) against whom the OWNER or the ENGINEER may have reasonable objection, nor will the CONTRACTOR be required to employ any Subcontractor against whom he has reasonable objection. The CONTRACTOR will not make any substitution for any Subcontractor who has been accepted by the OWNER and the ENGINEER, unless the ENGINEER determines that there is good cause for doing so.
- (b) The CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any

Subcontractor or other person or organization, except as may otherwise be required by law. OWNER or ENGINEER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done in accordance with the schedule of values.

- (c) The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- (d) The CONTRACTOR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER.
- (e) All Work performed for the CONTRACTOR by a Subcontractor shall be pursuant to an appropriate agreement between the CONTRACTOR and the Subcontractor.
- (f) The CONTRACTOR shall be responsible for the coordination of the trades, Subcontractors and materialmen engaged upon his Work.
  - (i) The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CONTRACTOR by the terms of these General Conditions and other Contract Documents insofar as applicable to the Work of Subcontractors, and to give the CONTRACTOR the same power in regards to terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provisions of the Contract Documents.
  - (ii) The OWNER or ENGINEER will not undertake to settle any differences between the CONTRACTOR and his Subcontractors or between Subcontractors.
  - (iii) If in the opinion of the ENGINEER, any Subcontractor on the Project proves to be incompetent or otherwise unsatisfactory, he shall be replaced if and when directed in writing.

#### 6.5 Patent Fees and Royalties:

- (a) The CONTRACTOR will pay all license fees and royalties and assume all costs incident to the use of any invention, design, process or device that is the subject of patent rights or copyrights held by others. He will indemnify and hold harmless the OWNER and the ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of such rights during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.
- (b) The CONTRACTOR shall be responsible for determining the application of patent rights and royalties on materials, appliances, articles or systems prior to bidding. However, he shall not be responsible for such determination on systems that do not involve purchase by him of materials, appliances and articles.

#### 6.6 Permits:

The CONTRACTOR will secure and pay for all construction permits and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of his Bid. When such charges are normally made by the OWNER and when so stated in the Contract Documents, there will be no charges to the CONTRACTOR. The OWNER shall assist the CONTRACTOR, when necessary, in obtaining such permits and licenses. The CONTRACTOR will also pay all public utility charges.

#### 6.7 Laws and Regulations:

The CONTRACTOR will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he will give the ENGINEER prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the ENGINEER, he will bear all costs arising therefrom; however, it shall not be his primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

#### 6.8 Taxes:

Cost of all sales and other taxes for which the CONTRACTOR is liable under the Contract shall be included in the Contract Price stated by the CONTRACTOR.

#### 6.9 Record Drawings:

The CONTRACTOR will keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the ENGINEER and to the State DEP and shall be delivered by him to the OWNER upon completion of the Project. It shall be used for this purpose only.

#### 6.10 Safety and Protection:

- (a) The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:
  - (i) All employees on the Work and other persons who may be affected thereby,
  - (ii) All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and

(iii) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement on roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The CONTRACTOR will designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR'S superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER.

#### 6.11 Emergencies:

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. He will give the ENGINEER prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the CONTRACTOR believes that additional work done by him is an emergency which arose from causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time, he may make a claim therefore as provided in Articles 11 and 12.

#### 6.12 Shop Drawings and Samples:

- (a) After checking and verifying all field measurements, the CONTRACTOR will submit to the ENGINEER for review, in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8) copies (or at the ENGINEER'S option, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the ENGINEER to review the information as required.
- (b) The CONTRACTOR will also submit to the ENGINEER for review, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- (c) At the time of each submission, the CONTRACTOR will in writing call the ENGINEER'S attention to any deviations that the Shop Drawings and samples may have from the requirements of the Contract Documents.
- (d) The ENGINEER will review with reasonable promptness Shop Drawings and samples, but his review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The review of a separate item as such will not indicate review of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the

ENGINEER and will return the required number of corrected copies of Shop Drawings and resubmit new samples until the review is satisfactory to the ENGINEER. The CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by the ENGINEER on previous submissions. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER and the ENGINEER that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

- (e) No work requiring a Shop Drawing or sample submission shall be commenced until the submission has been reviewed and approved by the ENGINEER. A copy of each Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.
- (f) The ENGINEER'S review of Shop Drawings or samples shall not relieve the CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents unless the CONTRACTOR has in writing called the ENGINEER'S attention to such deviation at the time of submission and the ENGINEER has given written approval to the specific deviation, nor shall any review by the ENGINEER relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

#### 6.13 Cleaning Up:

- (a) Site:

The CONTRACTOR shall clean up behind the Work as much as is reasonably possible as the Work progresses. Upon completion of the Work, and before acceptance of and final payment for the Project by the OWNER, the CONTRACTOR shall remove all his surplus and discarded materials, excavated material and rubbish from the roadways, sidewalks, parking areas, lawns and all adjacent property; shall clean his portion of Work involved in any building under this Contract, so that no further cleaning by the OWNER is necessary prior to his occupancy; shall restore all property both public and private, which has been disturbed or damaged during the prosecution of the Work; and shall leave the whole in a neat and presentable condition.

- (b) Building:

Clean-up operations shall consistently be carried on the CONTRACTOR at all times to keep the premises free from accumulation of waste materials and rubbish. Upon completion of the Work, he shall remove all rubbish, tools, scaffolding, surplus materials, etc., from the building and shall leave his work "broom clean", or its equivalent, unless more exactly specified elsewhere in the Contract. The General

CONTRACTOR shall do the following special cleaning for all trades upon completion of the Work:

- (i) Remove putty stains and paint from walls and wash and polish all glass. Do not scratch or otherwise damage glass.
  - (ii) Remove all marks, stains, fingerprints and other soil and dirt from painted, stained and decorated work.
  - (iii) Remove all temporary protections and clean and polish floors.
  - (iv) Clean and polish all hardware for all trades; this shall include removal of all stains, dust, dirt, paint, etc.
- (c) General:

In case of dispute, the OWNER may remove the rubbish and charge the cost to the CONTRACTORS that are involved with the construction of the Project, as the ENGINEER shall determine to be just.

#### 6.14 Public Convenience and Safety:

The CONTRACTOR shall, at all times, conduct the Work in such a manner as to ensure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. "Street Closed" signs shall be placed immediately adjacent to the Work, in a conspicuous position, at such locations as traffic demands. At any time that streets are required to closed, the CONTRACTOR shall notify law enforcement agencies, fire departments, and parties operating emergency vehicles before the street is closed and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

#### 6.15 Sanitary Provisions:

The General CONTRACTOR shall furnish necessary toilet conveniences, secluded from public observation, for use of all personnel on the Work, whether or not in his employ. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the Public Authorities having jurisdiction. He shall commit no public nuisance. Temporary sanitary facilities shall be removed upon completion of the Work and the premises shall be left clean.

#### 6.16 Indemnification:

- (a) The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (i) is

attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself) including the loss of use resulting therefrom and (ii) is caused in whole or in part by any negligent act of omission of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

- (b) In any and all claims against the OWNER or the ENGINEER or any of their agents or employees, by any employee of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.16(a), above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (c) The obligations of the CONTRACTOR under paragraph 6.16(b), above, shall not extend to the liability of the ENGINEER'S negligent acts, errors or omissions or those of his employees or agents.

#### 6.17 Responsibility for Connecting to Existing Work:

It shall be the express responsibility of the CONTRACTOR to connect his Work to each part of the existing work or of work previously installed as required by the Drawings and Specifications to provide a complete installation.

#### 6.18 Work in Street, Highway and other Rights-of-Way:

Excavation, grading, fill, storm drainage, paving and any other construction or installations in rights-of-way of streets, highways, public carrier lines, utility lines (either aerial, surface or subsurface), etc., shall be done in accordance with requirements of the Contract Documents. The OWNER will be responsible for obtaining all permits necessary for the Work. Upon completion of the Work, CONTRACTOR shall present to ENGINEER certificates, in triplicate, from the proper authorities stating that the Work has been done in accordance with their requirements.

- (a) The OWNER will cooperate with the CONTRACTOR in obtaining action from any utilities or public authorities involved in the above requirements.
- (b) The ENGINEER shall be responsible for obtaining elevations of curbs and gutters, pavement, storm drainage structures, and other such items that must be established by governmental agencies as soon as grading operations have begun on the site. It is advisable that this data should be obtained sufficiently early in the construction period to prevent any adverse effect on the Project.
- (c) Any variation from the requirements of paragraph 6.18(b), above, shall be stated in the Contract Documents.

#### 6.19 Cooperation with Governmental Agencies, Public Utilities, Etc.:

The OWNER shall be responsible for making all necessary arrangements with governmental agencies, public utilities, public carriers, service companies and corporation owning or controlling roadways, railways, water, sewer, gas, electrical, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported and protected, or the CONTRACTOR may relocate them if he so desires. The CONTRACTOR shall give all proper notices, shall comply with requirements of such parties in the performance of his Work, shall permit entrance of such parties on the Project in order that they may perform their necessary work, and shall pay all charges and fees made by such parties for this work.

- (a) The CONTRACTOR'S attention is called to the fact that there may be delays on the Project due to work to be done by governmental agencies, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.
- (b) The CONTRACTOR shall have made himself familiar with all codes, laws, ordinances and regulations which in any manner affect those engaged or employed in the Work, or materials and equipment used in or upon the Work, or in any way affect the conduct of the Work, and no plea of misunderstanding will be considered on account of his ignorance thereof.

#### 6.20 Use of Premises:

CONTRACTOR shall confine his apparatus, storage of materials, and operations of his workmen to limits indicated by law, ordinances, permits, and directions of ENGINEER and OWNER, and shall not unnecessarily encumber any part of the site.

- (a) CONTRACTOR shall not overload or permit any part of any structure to be loaded with such weight as will endanger its safety, nor shall he subject any part of the Work to stresses or pressures that will endanger it.
- (b) CONTRACTOR shall enforce OWNER'S instructions in connection with signs, advertisements, fires and smoking.
- (c) CONTRACTOR shall arrange and cooperate with OWNER in routing and parking of automobiles of his employees, Subcontractors and other personnel, and in routing material delivery truck and other vehicles to the Project site.

#### 6.21 Protection of Existing Property Improvements:

Any existing surface or subsurface improvements, such as pavements, curbs, sidewalks, pipes or utilities, footings, or structures (including portions thereof), trees and shrubbery, not indicated on the Drawings or noted in the Specifications as being removed or altered

shall be protected from damage during construction of the Project. Any such improvements damaged during construction of the Project shall be restored to a condition equal to that existing at time of Award of Contract.

#### 6.22 Temporary HVAC:

The General CONTRACTOR shall provide heat, ventilation, air condition (HVAC), and fuel services as necessary to protect all work and materials within all habitable areas of permanent building construction. This is to ensure that all contracts are protected against injury from dampness, heat and cold until final acceptance of all work and materials for the Project, unless building is fully occupied by the OWNER prior to such acceptance. In which case, the OWNER shall assume all expenses of HVAC from date of full occupancy. In areas outside those covered above, each prime contractor shall be responsible for providing such temporary services as required to protect his work or shall make all necessary arrangements with the General CONTRACTOR for providing such temporary services. Unless otherwise specifically permitted by the Contract Documents, the permanent HVAC system shall not be used to provide temporary HVAC. CONTRACTOR'S proposed methods should be submitted for approval.

## ARTICLE 7 – WORK BY OTHERS

- 7.1 The OWNER may perform additional work related to the Project by himself, or he may let others have direct contracts. Therefore, such contracts with others shall contain General Conditions similar to these. The General CONTRACTOR will afford the other contractors, who are parties to such direct contracts (or the OWNER, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work. The General CONTRACTOR shall properly connect and coordinate his Work with theirs.
- 7.2 If any part of the General CONTRACTOR'S work depends for proper execution or results upon the work of any such other CONTRACTOR (or the OWNER), the General CONTRACTOR will promptly report to the ENGINEER in writing any such work that hinder proper execution and results of his work.
- 7.3 The General CONTRACTOR will do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The General CONTRACTOR will 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 the ENGINEER and of the other CONTRACTORS whose work will be affected.
- 7.4 If the performance of additional work by other CONTRACTORS or the OWNER is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the General CONTRACTOR prior to starting any such additional work. If the General CONTRACTOR believes that the performance of such additional work by the OWNER or other involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore as provided in Articles 11 and 12.
- 7.5 Where practicable, the General CONTRACTOR shall build around the work of other separate contractors or shall leave chases, slots and holes as required to receive and to conceal within the general construction work, the work of such other separate contractors as directed by them. Where such chases, slots, etc., are impracticable, the work shall require specific approval of the ENGINEER.
- 7.6 Necessary chases, slots, and holes required by other CONTRACTOR, that were not cut or built by the General CONTRACTOR, shall be cut by the other CONTRACTOR that requires such alterations. However, before the other CONTRACTOR executes the work, he must obtain the approval of the General CONTRACTOR. The General CONTRACTOR shall do all patching and finishing of his Work where cut by other CONTRACTORS at the expense of such other CONTRACTORS.
- 7.7 Cooperation is required in the use of site facilities and in the detailed execution of the Work. Each CONTRACTOR shall coordinate his operations with those of the other CONTRACTORS for the best interest of the Work in order to prevent delay in the execution thereof.

- 7.8 Each CONTRACTOR shall keep himself informed of the progress of the work of other CONTRACTORS. Should lack of progress or defective workmanship on the part of other CONTRACTORS interfere with his operations, the CONTRACTOR affected shall notify the ENGINEER immediately. Lack of such notice to the ENGINEER will be construed as acceptance by the affected CONTRACTOR of the status of the work of other CONTRACTORS as being satisfactory for proper coordination of his own Work.
- 7.9 Each CONTRACTOR shall give notices of the progress of his work so as to allow other CONTRACTORS adequate opportunity to properly direct and coordinate their work. The General CONTRACTOR shall give notices of the progress of his Work so that work of other CONTRACTORS, when required to be concealed, may be placed before the general CONTRACTOR'S Work. All such notices shall be submitted to the ENGINEER with copies to other prime CONTRACTORS on the Project sufficiently ahead of the job progress schedule to permit adequate time for the other prime CONTRACTORS to coordinate their work.
- 7.10 The cost of extra work resulting from lack of notices, untimely notices, failure to respond to notices, defective work or lack of coordination shall be borne by the CONTRACTOR responsible for such lack of notices, etc.

## ARTICLE 8 – OWNER’S RESPONSIBILITIES

- 8.1 The OWNER will issue all communications to the CONTRACTOR through the ENGINEER.
- 8.2 In case of termination of the employment of the ENGINEER, the OWNER will appoint an engineer against whom the CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration, if mutually agreeable.
- 8.3 The OWNER will furnish the data required of him under the Contract Documents promptly and shall make payments to the CONTRACTOR promptly after they are due as provided in paragraph 14.3.
- 8.4 OWNER’S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1, 4.4, and the Contract Documents. Paragraph 4.2 refers to OWNER’S identifying and making available to CONTRACTOR copies of surveys and investigation reports of subsurface and latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by ENGINEER in preparing the Drawings and Specifications.
- 8.5 The OWNER’S responsibilities in respect of liability and property insurance are set forth in paragraph 5.5.
- 8.6 In addition to his rights to request changes in the Work in accordance with Article 10, the OWNER (especially in certain instances as provided in paragraph 10.4 will be obligated to execute Change Orders.
- 8.7 In connection with the OWNER’S right to stop Work or suspend Work, see paragraph 15.1. Paragraph 15.3 deals with the OWNER’S right to terminate services of the CONTRACTOR under certain circumstances.
- 8.8 The OWNER shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the fact that the time for completing the entire Work or any portion thereof may not have expired; but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the Work, the CONTRACTOR shall be entitled to such extra compensation or extension of time or both, except by prior agreement, as the ENGINEER may determine. See paragraph 14.4.
- 8.9 OWNER’S responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 9.5.

## ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

### 9.1 OWNER’S Representative:

The ENGINEER shall be the OWNER’S representative during the construction period. The duties and responsibilities and the limitations of authority of the ENGINEER as the OWNER’S representative during construction are set forth in Articles 1 through 17 of these General Conditions and shall not be extended without written consent of the OWNER and the ENGINEER.

- (a) The ENGINEER’S decision, in matters relating to aesthetics, shall be final, if within the terms of the Contract Documents.
- (b) All claims, counter-claims, disputes, and other matters in question between the OWNER and the CONTRACTOR arising out of or relating to this Agreement or the breach thereof, will be decided by arbitration in a court within the State that has jurisdiction to the location of the Project, if the parties hereto mutually agree; except as may be otherwise provided in this Contract.

### 9.2 Visits to Site:

The ENGINEER will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. He will not be required to make continuous on-site observations to check the quality or quantity of the Work. His efforts will be directed toward ascertaining on behalf of the OWNER that the completed Project will conform to the requirements of the Contract Documents. On the basis of his on-site observations as an experienced and qualified design professional, he will keep the OWNER informed of the progress of the Work and will endeavor to guard the OWNER against defects and deficiencies in the Work of CONTRACTORS.

### 9.3 Clarifications and Interpretations:

The ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise), as he may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification and interpretation entitles him to an increase in the Contract Price or extension of Contract Time, he may make a claim, therefore, as provided in Articles 11 and 12.

### 9.4 Measurement of Quantities:

The ENGINEER, in accordance with the United States Standard Measures, will measure all Work completed under the Contract. All linear surface measurements will be made horizontally or vertically as required by the item measured.

#### 9.5 Rejecting Defective Work:

The ENGINEER will have authority to disapprove or reject Work which is “defective” (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). He will also have authority to require special inspection or testing of the Work as provided in the Contract Documents, whether or not the Work is fabricated, installed or completed.

#### 9.6 Shop Drawings, Change Orders, and Payments:

- (a) In connection with the ENGINEER’S responsibility as to Shop Drawings and samples, see paragraphs 6.12(d) through 6.12(f), inclusive.
- (b) In connection with the ENGINEER’S responsibility for Change Orders, see Articles 10, 11, 12, and FDEP Supplementary Conditions.
- (c) In connection with the ENGINEER’S responsibilities in respect of Application for Payment, etc., see Article 14.

#### 9.7 Resident Project Representative:

The OWNER or the ENGINEER will provide on-site representation sufficient to guarantee that construction is in general compliance with the construction Drawings and the Contract Specifications.

#### 9.8 Decisions on Disagreements:

- (a) The ENGINEER will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder. In his capacity as interpreter and judge he will exercise his best efforts to ensure faithful performance by both the OWNER and the CONTRACTOR. He will not show partiality to either and shall not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred initially to the ENGINEER for decision; which he shall render in writing within a reasonable time.
- (b) Either the OWNER or the CONTRACTOR, if both agree, may request arbitration with respect to any such claim, dispute or other matter that has been referred to the ENGINEER, except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.4, such arbitration to be in accordance with Article 16. However, no request for arbitration of any such claim, dispute or other matter shall be made until the earlier of (i) the date on which the ENGINEER has rendered his decision or (ii) the tenth day after the parties have presented their evidence to the ENGINEER, if he has not rendered his written decision before that date. No request for arbitration shall be made later than thirty (30) after the date on

which the ENGINEER rendered his written decision in respect of the claim, dispute or other matter as to which arbitration is sought; and the failure to request arbitration within said thirty (30) days' period shall result in the ENGINEER'S decision being final and binding upon the OWNER and the CONTRACTOR. If the ENGINEER renders a decision after arbitration proceeding have been initiated, such decision may be entered as evidence but shall not supersede the arbitration proceedings, except when the decision is acceptable to the parties concerned.

#### 9.9 Limitations on Engineer's Responsibilities:

- (a) Neither the ENGINEER'S authority to act under this Article 9 nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the ENGINEER to the CONTRACTOR, any Subcontractor, any of their agents or employees or any other person performing any of the Work.
- (b) The ENGINEER will not be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions and programs incident thereto, and he will not be responsible for the CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.
- (c) The ENGINEER will not be responsible for the acts or omissions of the CONTRACTOR, or any Subcontractors, or any of his or their agents or employees, or any other persons performing any of the Work.

#### 9.10 Record Drawings:

The CONTRACTOR shall assist the ENGINEER to incorporate all Contract annotated changes, all addenda and all modifications to the plans and specifications into a final as-built set of plans and specifications. Four sets of these final as-built plans and specifications will be supplied to the OWNER.

## ARTICLE 10 – CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, the CONTRACTOR will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, and equitable adjustment will be made as provided in Article 11 or Article 12. A Change Order signed by the CONTRACTOR indicates his agreement therewith.
- 10.2 The ENGINEER may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. A Field Order may accomplish these minor changes or alterations. If the CONTRACTOR believes that any minor change or alteration authorized by the ENGINEER entitles him to an increase in the Contract Price or extension of Contract Time, he may make a claim therefore as provided in Articles 11 and 12.
- 10.3 Additional Work performed by the CONTRACTOR without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.11 and except as provided in paragraph 10.2, above.
- 10.4 The OWNER will execute appropriate Change Orders prepared by the ENGINEER covering changes in the Work to be performed, as provided in paragraph 4.4. And Work performed in an emergency, as provided in paragraph 6.11. Also, any other claim of the CONTRACTOR for a change in the Contract Time or the Contract Price which is approved by the ENGINEER.
- 10.5 It is the CONTRACTOR'S responsibility to notify his surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable bonds, which shall be adjusted accordingly. The CONTRACTOR will furnish proof of such adjustment to the OWNER.

## ARTICLE 11 – CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without changing the Contract Price.
- (a) The OWNER may, at any time, without notice to the sureties, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
    - (i) in the Specifications (including drawings and designs);
    - (ii) in the method or manner of performance of the Work;
    - (iii) in the OWNER-furnished facilities, equipment, materials, services, or site; or
    - (iv) directing acceleration in the performance of the Work.
  - (b) Any other written order or oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the OWNER, which causes any such change, shall be treated as a Change Order under this clause, provided that the CONTRACTOR gives the OWNER written notice stating the date, circumstances, and source of the order and that the CONTRACTOR regards the order as a Change Order.
  - (c) Except as herein provided, no order, statement, or conduct of the OWNER shall be treated as a change under this clause or entitle the CONTRACTOR to an equitable adjustment hereunder.
  - (d) If any change under this clause causes an increase or decrease in the CONTRACTOR'S cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly: Provided, however, that except for claims based on defective specifications, no claim for any change under paragraph (b), above, shall be allowed for any costs incurred more than twenty (20) days before the CONTRACTOR gives written notice as therein required: And provided further, that in the case of defective specifications for which the OWNER is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the CONTRACTOR in attempting to comply with such defective specifications.
  - (e) If the CONTRACTOR intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) days after receipt of a written Change Order under paragraph (11.1), above, submit to the OWNER a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the OWNER. The statement of claim hereunder may be included in the notice under paragraph (11.1), above.

- (f) No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

11.2 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 determine in one of the following ways:

- (a) Each Change Order shall be reviewed in accordance with the provisions of Chapter 62-552, FAC. The CONTRACTOR shall assure that the cost and pricing data submitted for evaluation of Change Orders is based on current accurate and complete data supported by their books and records.
- (b) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved. Should the Work (by quantity) be increased or decreased by 15 percent from that stipulated in the Contract Documents, the OWNER and the CONTRACTOR may request adjustment of the unit prices by negotiation. If negotiation fails to reach agreement, then either party may request arbitration for the volume in excess of the 15 percent differential.
- (c) By negotiated lump sum.
- (d) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the Work plus a fixed amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.

11.3 The term Cost of the Work means the sum of all costs necessarily incurred and paid by the 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 paragraph 11.4:

- (a) 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, 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 Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

- (b) Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith:

All cash discounts shall accrue to CONTRACTOR unless 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.

- (c) Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors:

If required by OWNER, CONTRACTOR shall deliver such Bids to OWNER who will then determine with the advice of ENGINEER, which Bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of Work Plus a Fee, the Cost of the Work shall be determined in accordance with paragraphs 11.3 and 11.4. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

- (d) Costs of special consultants (including, but not limited to engineers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.
- (e) Supplemental costs including the following:
- (i) The proportion of necessary transportation, traveling and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.
  - (ii) Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
  - (iii) Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with 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.
  - (iv) Sales, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by any governmental authority.
  - (v) Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments and fees for permits and licenses. Costs for permits and licenses must be shown as a separate item.

- (vi) Losses, damages and expenses, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of, and to, 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, he shall be paid for his services a fee proportionate to that stated in paragraph 11.5(b).
- (vii) The cost of utilities, fuel and sanitary facilities at the site.
- (viii) 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.
- (ix) Cost of premiums for additional Bonds and Insurance required because of changes in the Work.

11.4 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 (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the schedule referred to in subparagraph 11.3(a) – all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.
- (b) Expenses of CONTRACTOR'S principal and branch offices other than his 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 policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except as otherwise provided in subparagraph 11.3(ix)).
- (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 paragraph 11.3.

11.5 The CONTRACTOR'S Fee, which shall be allowed to CONTRACTOR for his overhead and profit, shall be determined as follows:

(a) a mutually acceptable firm fixed price; or if none can be agreed upon,

(b) a mutually acceptable fixed fee based on the estimate of the various portions of the Cost of the Work.

11.6 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change that results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the net shall be computed to include overhead and profit, identified separately, for both additions and credits.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.3 and 11.4, CONTRACTOR will submit in form prescribed by ENGINEER an itemized cost breakdown together with supporting data.

## ARTICLE 12 – CHANGE OF THE CONTRACT TIME

- 12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER and ENGINEER within ten (10) days of the occurrence of the event-giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by ENGINEER, if OWNER and CONTRACTOR cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR, if he makes a claim therefore, as provided in paragraph 12.1, above. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by OWNER, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.
- 12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.
- 12.4 No claim for delay shall be allowed because of failure to furnish Drawings until two (2) weeks after demand for such Drawings and not then unless such claim be reasonable.

## ARTICLE 13 – GUARANTEE

13.1 The CONTRACTOR shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees, for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system, that the completed system is free from all defects due to faulty materials or workmanship. The CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or the Work that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period. Express warranties are set forth in the Contract Documents.

## ARTICLE 14 – PAYMENTS AND COMPLETION

### 14.1 Payment to Contractor:

At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the Work performed during the period covered by the partial payment estimate. This submittal must be supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER may retain a portion of the amount otherwise due the CONTRACTOR. Except as State law otherwise provides, the amount the OWNER retains shall be limited to the following:

- (a) Withholding of not more than ten (10) percent of the payment claimed until work is fifty (50) percent complete;
- (b) When work is fifty (50) percent complete, reduction of the withholding to five (5) percent of the dollar value of all Work satisfactorily completed to date, provided that the CONTRACTOR is making satisfactory progress and there is no specific cause for greater withholding;
- (c) When the Work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below five (5) percent to only that amount necessary to assure completion.
- (d) The OWNER may reinstate up to ten (10) percent withholding if the OWNER determines, at its discretion, that the CONTRACTOR is not making satisfactory progress or there is other specific cause for withholding.

### 14.2 Contractor's Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will have passed to the OWNER prior to the making of the Application for Payment. And that it must be free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"); and that no work, materials or equipment covered by an Application for Payment will have been acquired by the CONTRACTOR or by any other person performing the Work at the site or furnishing

materials and equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

#### 14.3 Approval of Payments:

(a) The ENGINEER'S approval of any payment requested in an Application for Payment shall constitute a representation by him to the OWNER. The ENGINEER'S approval is based on his on-site observations of the Work in progress as an experienced and qualified design professional. The approval is also based on his review of the Application for Payment and the supporting data that show the Work has progressed to the point indicated. Furthermore, to the best of his 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 Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his approval). And that the CONTRACTOR is entitled to payment of the amount approved. However, by approving any such payment, the ENGINEER shall not be deemed to have represented that he made exhaustive or continuous on-site observations to check the quality or the quantity of the Work; or that he has reviewed the means, methods, techniques, sequences, and procedures of construction; or that he has made any examination to ascertain how or for what purpose the CONTRACTOR has used the moneys paid or to paid to him on account of the Contract Price; or that title to any Work, materials, or equipment has passed to the OWNER free and clear of any Liens.

(b) The CONTRACTOR shall make the following certification on each request for payment:

“I hereby certify that the labor and materials listed on this request for payment have been used in the construction of this work or that all materials included in this request for payment and not yet incorporated into the construction are now on the site or stored at an approved location; and payment received from the last request for payment has been used to make payments to all first tier subcontractors and suppliers except as listed below.”

(c) The ENGINEER'S approval of final payment shall constitute an additional representation by him to the OWNER that the conditions precedent to the CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.4 have been fulfilled.

(d) The ENGINEER may refuse to approve the whole or any part of any payment if, in his opinion, he is unable to make such representations to the OWNER. He may also refuse to approve any such payment, or, because of subsequently discovered evidence or the results of subsequent inspection or tests, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the OWNER from loss because:

- (i) The Work is defective, or completed Work has been damaged requiring correction.
  - (ii) The Work for which payment is requested cannot be verified.
  - (iii) Claims or Liens have been filed or there is reasonable evidence indicating the probable filing thereof.
  - (iv) The Contract Price has been reduced because of Modifications.
  - (v) The OWNER has been required to correct defective Work or complete the Work in accordance with paragraph 13.1.
  - (vi) Of unsatisfactory prosecution of the Work, including failure to clean up as required by paragraph 6.13.
  - (vii) Of persistent failure to cooperate with other contractors on the Project and persistent failure to carry out the Work in accordance with the Contract Documents.
  - (viii) Of liquidated damages payable by the CONTRACTOR.
  - (ix) Of any other violation of, or failure to comply with, the provisions of the Contract Documents.
- (e) Prior to Substantial Completion, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.
  - (f) The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the OWNER.
  - (g) Upon completion and acceptance of the Work, the ENGINEER shall issue a certificate, attached to the final payment request, that he has accepted the Work under the conditions of the Contract Documents. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the Work.
  - (h) The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the Work. The CONTRACTOR shall, at the OWNER'S request,

furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so, the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S pay from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims. When satisfactory evidence is furnished that all liabilities have been fully discharged, payment to the CONTRACTOR shall be resumed in accordance with the terms of the Contract Documents. But in no event shall the provisions of this paragraph be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

#### 14.4 Acceptance of Final Payment as Release:

The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability other than claims in stated amounts as may be specifically accepted by the CONTRACTOR for all things done or furnished in connection with this Work and for every act and neglect of the OWNER and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the Contract Documents or the Performance and Payment Bonds.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.1 Owner May Suspend Work:

The 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 the CONTRACTOR and the ENGINEER which shall fix the date on which Work shall be resumed. The CONTRACTOR will resume the Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefore as provided in Articles 11 and 12.

### 15.2 Work During Inclement Weather:

No work shall be done under these Specifications except by permission of the OWNER when the weather is unfit for good and careful work to be performed. Should the severity of the weather continue, the CONTRACTOR, upon the direction of the OWNER, shall suspend all work until instructed to resume operations by the OWNER and the Contract Time shall be extended to cover the duration of the order. Work damaged during periods of suspension due to inclement weather shall be repaired and/or replaced by the CONTRACTOR. Any compensation for repairs or replacements shall be subject to approval of the OWNER.

### 15.3 Owner May Terminate:

- (a) If the CONTRACTOR is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the Contract Documents, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety seven (7) days' written notice, terminate the services of the CONTRACTOR and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the Work by whatever method he may deem expedient. In such case, the 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 and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR or the Surety will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a Change Order.

- (b) Where the CONTRACTOR'S services have been so terminated by the OWNER, said terminations shall not affect any rights of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys by the OWNER due the CONTRACTOR will not release the CONTRACTOR from liability.
- (c) Upon seven (7) days' written notice to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, the CONTRACTOR shall be paid for all Work executed and any expense sustained plus a reasonable profit.

#### 15.4 Removal of Equipment:

In the case of termination of this Contract before completion, for any cause whatever, the CONTRACTOR, if notified to do so by the OWNER, shall promptly remove any part or all of his equipment and supplies from the property of the OWNER. Should the CONTRACTOR not remove such equipment and supplies, the OWNER shall have the right to remove them at the expense of the CONTRACTOR. Equipment and supplies shall not be construed to include such items for which the CONTRACTOR has been paid in whole or in part.

#### 15.5 Contractor May Stop Work or Terminate:

If, through no act or fault of the CONTRACTOR, the work is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any Application for Payment within thirty (30) days of its approval and presentation, then the CONTRACTOR, upon seven days' written notice to the OWNER and the ENGINEER, terminate the Agreement and recover from the OWNER payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if the ENGINEER, has failed to act on an Application for Payment or the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon seven (7) days' notice to the OWNER and the ENGINEER stop the Work until he has been paid all amounts then due.

#### 15.6 Owner Furnished Equipment:

In case the OWNER furnishes equipment to the CONTRACTOR to install, but fails to deliver it to the CONTRACTOR as required by the Contract Documents, and in case such failure causes the CONTRACTOR additional expense or need for extension of time, the CONTRACTOR may make such claims upon the OWNER and obtain adjustments as provided herein.

#### 15.7 Liquidated Damages:

If the CONTRACTOR shall fail to complete the Work within the Contract Time, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the Contract Documents for

each calendar day that the CONTRACTOR shall be in default after the time stipulated in the Contract Documents.

## ARTICLE 16 – ARBITRATION

- 16.1 All claims, disputes and other matters in question arising out of, or relating to, this Agreement of the breach thereof, except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.4, shall be decided by arbitration. That is, if all parties mutually agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, or in a court of the State that has jurisdiction of the location of the Project. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in any court having jurisdiction thereof.
- 16.2 Notice of the request for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association, if both parties mutually agree to arbitration, and a copy shall be filed with the ENGINEER. The request for arbitration shall be made within the thirty (30)-day period specified in paragraph 9.8(b), where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen. But in no event shall it be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question or would it be barred by the applicable statute of limitations.
- 16.3 The CONTRACTOR will carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise agreed by him and the OWNER in writing.

## ARTICLE 17 – MISCELLANEOUS

- 17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall 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 sender of the notice.
- 17.2 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such progress payment, interest at 1 ½% per month commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.
- 17.3 All Specifications, Drawings and copies thereof furnished by the ENGINEER shall remain his property. They shall not be used on another Project, and, with the exception of those sets that have been signed in connection with the execution of the Agreement, shall be returned to him on request upon completion of the Project.
- 17.4 The duties and obligations imposed by these General Conditions and the FDEP Supplementary Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.17 and 14.3(a) and those in the Contract Documents. And, in addition, the rights and remedies available to OWNER and ENGINEER thereunder, shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.
- 17.5 Should the OWNER or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other or of any of his employees or agents or others for whose acts he is legally liable; claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
- 17.6 The Contract Documents shall be governed by the law of the location of the Project.

Florida Department of Environmental Protection  
Bureau of Water Facilities Funding  
Supplementary Conditions  
for

Formally Advertised  
Construction Procurement

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**\*DESIGNATES PROVISIONS THAT ARE NOT REQUIRED FOR NON-EQUIVALENCY PROJECTS**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS**

The intent of the Florida Department of Environmental Protection (FDEP) Supplementary Conditions is to complement and supplement other provisions of the Bidding Documents. However, if there is any conflict between the FDEP Supplementary Conditions and other provisions of the Bidding Documents, the FDEP Supplementary Conditions shall take precedence over the other provisions except when the other provisions are similar to, but more stringent than, the FDEP Supplementary Conditions. When other provisions of the Bidding Documents are similar to, but more stringent than, the FDEP Supplementary Conditions, the more stringent provisions shall apply.

ARTICLE 1 - DEFINITIONS

1.1. Wherever used in these Supplementary Conditions (except in the appendices to these Supplementary Conditions), the following terms have the meanings indicated, which are applicable to both the singular and plural thereof.

1.1.1. Addendum - A written or graphic instrument that is issued prior to the opening of bids and that clarifies, corrects, or changes the Bidding Documents.

1.1.2. Agreement or Contract - The written agreement between the Owner and the Contractor covering the Work to be performed and furnished; these Supplementary Conditions and other Contract Documents are attached to the Agreement/Contract and made a part thereof as provided therein.

1.1.3. Application for Payment - The form that is accepted by the Engineer and used by the Contractor in requesting progress and/or final payments and that is to include such supporting documentation as is required by the Contract Documents.

1.1.4. Bid - The offer or proposal of a bidder submitted on the prescribed form and setting forth the price(s) for the Work to be performed and furnished.

1.1.5. Bidder - Any person, firm, or corporation that submits a bid directly to the Owner.

1.1.6. Bidding Documents - The Advertisement for Bids or the Invitation to Bid, the Instructions to Bidders or the Information for Bidders, the Bid Form, the proposed Contract Documents, and all addenda.

1.1.7. Bond - An instrument of security.

1.1.8. Change Order - A document that is recommended by the Engineer and signed by the Contractor and the Owner; that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price

or the Contract Time; and that is issued on or after the Effective Date of the Agreement/Contract.

1.1.9. Contract Documents - The Agreement/Contract; the Contractor's Bid when attached as an exhibit to the Agreement/Contract; the Performance and Payment Bond(s); the General Conditions; the Supplementary Conditions (including these Supplementary Conditions); the Specifications (written technical descriptions of material, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto); the Drawings (drawings that show the character and scope of the Work to be performed and furnished); all addenda that pertain to the Contract Documents; and all change orders.

1.1.10. Contract Price - The moneys payable by the Owner to the Contractor under the Contract Documents as stated in the Agreement/Contract.

1.1.11. Contract Time - The number of days or the date stated in the Contract Documents for completion of the Work.

1.1.12. Contractor - The person, firm, or corporation with whom or which the Owner enters into the Agreement/Contract.

1.1.13. Effective Date of the Agreement/Contract - The date indicated in the Agreement/Contract on which the Agreement/Contract becomes effective, or if no such date is indicated in the Agreement/Contract, the date on which the Agreement/Contract is signed and delivered by the last of the two parties to sign and deliver the Agreement/Contract.

1.1.14. Engineer - The person, firm, or corporation named as such in the Contract Documents.

1.1.15. Minority Business Enterprise (MBE) - A historically Black college or university or a business that is (a) certified as socially and economically disadvantaged by the Small Business Administration, (b) certified as an MBE by a state or Federal agency, or (c) an independent business concern which is at least 51-percent owned and controlled by minority group members. (A minority group member is an individual who is a citizen of the United States and one of the following: [i] Black American; [ii] Hispanic American [with origins from Puerto Rico, Mexico, Cuba, or South or Central America]; [iii] Native American [American Indian, Eskimo, Aleut, or native Hawaiian]; or [iv] Asian-Pacific American [with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian Subcontinent].)

1.1.16. Notice to Proceed - The written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform its obligations under the Contract Documents.

1.1.17. Owner - The local government (municipality, county, district, or authority; or any agency thereof; or a combination of two or more of the foregoing acting jointly) with which the Florida Department of Environmental Protection may execute, or has executed, a State revolving fund loan agreement and for which the Work is to be provided.

1.1.18. Project - The total construction or facilities described in a State revolving fund loan agreement between the Florida Department of Environmental Protection and the Owner, of which the Work to be provided under the Contract Documents may be the whole or a part.

1.1.19. Subcontract - A direct contract between a subcontractor and the Contractor, or any other subcontractor at any tier, for the furnishing of goods (material and equipment) or the performance of services (including construction) necessary to complete the Work.

1.1.20. Subcontractor - A person, firm, or corporation having a direct contract with the Contractor, or any other subcontractor at any tier, for the furnishing of goods (material and equipment) or the performance of services (including construction) necessary to complete the Work.

1.1.21. Successful Bidder - The lowest responsive, responsible bidder to whom or which the Owner intends to award the Agreement/Contract.

1.1.22. Women's Business Enterprise (WBE) - A business that is (a) certified as a WBE by a state or Federal agency or (b) an independent business concern which is at least 51-percent owned and controlled/operated by women. (Determination of whether a business is at least 51-percent owned by women shall be made without regard to community property laws [e.g., an otherwise qualified WBE that is 51-percent owned by a married woman in a community property state will not be disqualified because the married woman's husband has a 50-percent interest in the married woman's share of the business; similarly, a business that is 51-percent owned by a married man and 49-percent owned by women will not become a qualified WBE by virtue of the married man's wife having a 50-percent interest in the married man's share of the business].)

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

## ARTICLE 2 - PRIVACY OF AGREEMENT/CONTRACT

2.1. The Owner expects to finance this Agreement/Contract with assistance from the Florida Department of Environmental Protection, which administers a State revolving fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency. Neither the State of Florida nor the United States (nor any of their

departments, agencies, or employees) will be a party to this Agreement/Contract or any lower-tier subcontract.

ARTICLE 3 - PROCUREMENT REQUIREMENTS

3.1. This Agreement/Contract and the Owner's solicitation and award of this Agreement/Contract are subject to requirements contained in Chapter 62-552 (Revolving Loan Program), Florida Administrative Code.

ARTICLE 4 - RESOLUTION OF PROTESTS AND CLAIMS/DISPUTES

**Resolution of Protests Concerning the Owner's Solicitation and/or Award of this Agreement/Contract:**

4.1. Protests concerning the Owner's solicitation and/or award of this Agreement/Contract must be filed in writing with the Owner to be considered.

4.2. All timely written protests concerning the Owner's solicitation and/or award of this Agreement/Contract are to be resolved in accordance with the Owner's dispute resolution process. A copy of the ordinance(s), resolution(s), or written policy(policies) that set forth the Owner's dispute resolution process is included elsewhere in the Bidding Documents or is to be made available by the Owner upon request.

4.3. Neither the Florida Department of Environmental Protection (FDEP) nor the United States Environmental Protection Agency (USEPA) will become a party to, or have any role in resolving, protests concerning the Owner's solicitation and/or award of this Agreement/Contract. Protest decisions made by the Owner can not be appealed to the FDEP or the USEPA.

**Resolution of Claims and Disputes Between the Owner and the Contractor:**

4.4. Unless otherwise provided in the Contract Documents, all claims and disputes between the Owner and the Contractor arising out of, or relating to, the Contract Documents or the breach thereof are to be decided by arbitration (if the Owner and the Contractor mutually agree) or in a court of competent jurisdiction within the State of Florida.

4.5. Neither the Florida Department of Environmental Protection nor the United States Environmental Protection Agency will become a party to, or have any role in resolving, claims and disputes between the Owner and the Contractor.

ARTICLE 5 - CHANGES TO THE BIDDING AND CONTRACT DOCUMENTS

5.1. All changes to the Bidding Documents made subsequent to the Florida Department of Environmental Protection's (FDEP's) acceptance of the Bidding Documents and prior to the opening of bids are to be documented via addendum(addenda) to the Bidding Documents; all changes to the Contract Documents made after the opening of bids are to be documented by change order(s) to the Contract Documents. The Owner shall submit all addenda and change orders to the FDEP.

ARTICLE 6 - ADVERTISEMENT FOR BIDS; SUBMISSION OF BIDS; OPENING OF BIDS

**Advertisement for Bids:**

6.1. At a minimum, this Agreement/Contract is to be advertised for bids in local and statewide newspapers.

**Submission of Bids:**

6.2. Bidders shall submit their bids at the place and by the deadline indicated elsewhere in the Bidding Documents.

**Opening of Bids:**

6.3. Bids are to be opened and read aloud publicly at the time and place indicated elsewhere in the Bidding Documents.

ARTICLE 7 - BONDS AND INSURANCE

**Bid Guarantees:**

7.1. Each bidder's bid is to be accompanied by a bid guarantee made payable to the Owner in an amount at least equal to five percent of the bidder's maximum bid price and in the form of a certified check or bid bond.

**Performance and Payment Bond(s):**

7.2. The Contractor shall furnish a combined performance and payment bond in an amount at least equal to 100 percent of the Contract Price (or, if required elsewhere in the Contract Documents, the Contractor shall furnish separate performance and payment bonds, each in an amount at least equal to 100 percent of the Contract Price) as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. This(these) bond(s) are to be delivered to the Owner by the Contractor along with the executed Agreement/Contract. The Owner shall forward a copy of this(these) bond(s) to the Florida Department of Environmental Protection.

**Insurance:**

7.3. The Owner and/or the Contractor (as required elsewhere in the Contract Documents) shall purchase and maintain, during the period of construction, such liability insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims that may arise out of, or result from, the Contractor's performance and furnishing of the Work (whether the Work is to be performed or furnished by the Contractor or any subcontractor at the Work site) and the Contractor's other obligations under the Contract Documents. This insurance is to include workers' compensation insurance, comprehensive general liability insurance, comprehensive automobile liability insurance, and contractual liability insurance applicable to the Contractor's indemnification obligations and is to be written for not less than the limits of liability and coverages determined by the Owner or required by law, whichever is greater.

7.4. The Owner and/or the Contractor (as required elsewhere in the Contract Documents) shall purchase and maintain, during the period of construction, property insurance upon the Work at the Work site in an amount equal to the full replacement cost of the Work or the full insurable value of the Work. This insurance is to include the interests of the Owner, the Contractor, and all subcontractors at the Work site (all of whom are to be listed as insureds or additional insured parties); is to insure against the perils of fire and extended coverage; and is to include "all-risk" insurance for physical loss or damage due to theft, vandalism and malicious mischief, collapse, water damage, and/or all other risks against which coverage is obtainable.

7.5. Before any Work at the Work site is started, the Contractor shall deliver to the Owner certificates of insurance that the Contractor is required to purchase and maintain in accordance with Paragraphs 7.3 and 7.4 of this Article and other provisions of the Contract Documents, and the Owner shall deliver to the Contractor certificates of insurance that the Owner is required to purchase and maintain in accordance with Paragraphs 7.3 and 7.4 of this Article and other provisions of the Contract Documents. The Owner shall forward a copy of these certificates to the Florida Department of Environmental Protection.

ARTICLE 8 - AWARD OF AGREEMENT/CONTRACT

8.1. If this Agreement/Contract is awarded, it is to be awarded to the lowest responsive, responsible bidder. A fixed-price (lump-sum or unit-price or both) agreement/contract is to be used. A clear explanation of the method of evaluating bids and the basis for awarding this Agreement/Contract are included elsewhere in the Bidding Documents. All bids may be rejected when in the best interest of the Owner.

ARTICLE 9 - CONTRACT TIME AND NOTICE TO PROCEED

**Contract Time:**

9.1. The number of days within which, or the date by which, the Work is to be completed and ready for final payment (the Contract Time) is set forth elsewhere in the Contract Documents.

**Notice to Proceed:**

9.2. The Owner shall give the Contractor a notice to proceed fixing the date on which the Contract Time will commence to run. The Owner shall forward a copy of this notice to proceed to the Florida Department of Environmental Protection.

ARTICLE 10 - ITEMIZED CONSTRUCTION COST BREAKDOWN; CONSTRUCTION AND PAYMENT SCHEDULES

10.1. The Contractor shall submit to the Owner, within ten calendar days after the Effective Date of this Agreement/Contract, an itemized construction cost breakdown and construction and payment schedules.

10.1.1. The itemized construction cost breakdown, or schedule of values, is to include quantities and prices of items aggregating the Contract Price and is to subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices are to include an appropriate amount of overhead and profit applicable to each item of Work.

10.1.2. The construction, or progress, schedule is to indicate the Contractor's estimated starting and completion dates for the various stages of the Work and is to show both the projected cost of Work completed and the projected percentage of Work completed versus Contract Time.

10.1.3. The payment schedule is to show the Contractor's projected progress and final payments cumulatively by month.

ARTICLE 11 - AVAILABILITY OF LANDS

11.1. The Owner shall furnish all lands and shall obtain all rights-of-ways and easements upon which the Work is to be performed and furnished.

ARTICLE 12 - FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION CONSTRUCTION PERMIT(S)

12.1. The Owner shall obtain the appropriate Florida Department of Environmental Protection construction permit(s) required for the Work.

ARTICLE 13 - ENGINEER

13.1. The Owner shall employ a professional engineer registered in the State of Florida to oversee the Work.

ARTICLE 14 - APPLICATIONS FOR PAYMENT

14.1. The Contractor's applications for payment are to be accompanied by such certificates or documents as may be reasonably required. The Owner shall forward a copy of such certificates or documents as may be reasonably required to the Florida Department of Environmental Protection.

ARTICLE 15 - ACCESS TO RECORDS

15.1. Authorized representatives of the Owner, the Florida Department of Environmental Protection, and the United States Environmental Protection Agency shall have access to, for the purpose of inspection, any books, documents, papers, and records of the Contractor that are pertinent to this Agreement/Contract. The Contractor shall retain all books, documents, papers, and records pertinent to this Agreement/Contract for a period of five years after receiving and accepting final payment under this Agreement/Contract.

ARTICLE 16 - ACCESS TO WORK SITE(S)

16.1. Authorized representatives of the Owner, the Florida Department of Environmental Protection (FDEP), and the United States Environmental Protection Agency (USEPA) shall have access to the Work site(s) at any reasonable time. The Contractor shall cooperate (including making available working copies of plans and specifications and supplementary materials) during Work site inspections conducted by the Owner, the FDEP, or the USEPA.

ARTICLE 17 - MINORITY AND WOMEN'S BUSINESS ENTERPRISES

17.1. A goal of 9 \* percent of the Contract Price is established for Minority Business Enterprise (MBE) participation in the Work, and a goal of 3 \* percent of the Contract Price is established for Women's Business Enterprise (WBE) participation in the Work. If bidders or prospective contractors (including the Contractor) intend to let any lower-tier goods or services (including construction) subcontracts for any portion of the Work, they shall physically include these percentage goals for MBE and WBE participation in all solicitations for subcontracts and shall take affirmative steps to assure that MBEs and WBEs are utilized, when possible, as sources of goods and services. Affirmative steps are to include the following: (a) including small, minority, and women's businesses on solicitation lists; (b) assuring that small, minority, and women's businesses are solicited whenever they are potential sources; (c) dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small, minority, and women's businesses; (d) establishing delivery

schedules, when requirements permit, that will encourage participation by small, minority, and women's businesses; and (e) using the services of the Small Business Administrative and the Office of Minority Business Enterprise of the United States Department of Commerce as appropriate.

\*The percentage goals for MBE and WBE participation are to be inserted by the Owner and are to be based upon the percentage goals that have been, or will be, stipulated in the State revolving fund loan agreement for the Owner's FDEP-assisted Project.

17.2. Within ten calendar days after being notified of being the apparent Successful Bidder, the apparent Successful Bidder shall submit to the Owner documentation of the affirmative steps it has taken to utilize Minority and Women's Business Enterprises (MBEs and WBEs) in the Work and documentation of its intended use of MBEs and WBEs in the Work. The Owner shall keep this documentation on file and shall forward to the Florida Department of Environmental Protection a copy of the apparent Successful Bidder's documentation concerning its intended use of MBEs and WBEs in the Work.

17.3. Minority and Women's Business Enterprise (MBE and WBE) participation in the Work is to be considered in the award of this Agreement/Contract. The Owner shall not execute this Agreement/Contract until the Florida Department of Environmental Protection has approved the extent of MBE and WBE participation in the Work.

ARTICLE 18 - VIOLATING FACILITIES (SECTION 306 OF THE CLEAN AIR ACT, SECTION 508 OF THE CLEAN WATER ACT, AND EXECUTIVE ORDER 11738)

18.1. The Contractor, and all subcontractors at any tier, shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans), and 40 CFR Part 15, which prohibit the use, under nonexempt Federal contracts, grants, or loans, of facilities included on the United States Environmental Protection Agency's List of Violating Facilities.

18.2. In accordance with 40 CFR Part 15, if the price of this Agreement/Contract exceeds \$100,000 and/or if this Agreement/Contract is otherwise nonexempt from 40 CFR Part 15, the Contractor agrees to the following:

18.2.1. the Contractor will not use any facility on the United States Environmental Protection Agency's List of Violating Facilities in the performance of this Agreement/Contract for the duration of time that the facility remains on the List;

18.2.2. the Contractor will notify the Florida Department of Environmental Protection/United States Environmental Protection Agency (USEPA) if a facility it intends to use in the performance of this Agreement/Contract is on the USEPA's List of Violating Facilities or if it knows that a facility it intends to use in the performance of this Agreement/Contract has been recommended to be placed on the USEPA's List of Violating Facilities; and

18.2.3. in the performance of this Agreement/Contract, the Contractor will comply with all requirements of the Clean Air Act and the Clean Water Act, including the requirements of Section 114 of the Clean Air Act and Section 308 of the Clean Water Act, and all applicable clean air standards and clean water standards.

18.3. If the Contractor, or any subcontractor at any tier, awards any lower-tier goods or services (including construction) subcontracts for any portion of the Work, it shall physically include in all such subcontracts the following provision:

18.3.1. The Subcontractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans), and 40 CFR Part 15, which prohibit the use, under nonexempt Federal contracts, grants, or loans, of facilities included on the United States Environmental Protection Agency's (USEPA's) List of Violating Facilities. In accordance with 40 CFR Part 15, if the price of this Subcontract exceeds \$100,000 and/or if this Subcontract is otherwise nonexempt from 40 CFR Part 15, the Subcontractor agrees to the following: (a) the Subcontractor will not use any facility on the USEPA's List of Violating Facilities in the performance of this Subcontract for the duration of time that the facility remains on the List; (b) the Subcontractor will notify the Florida Department of Environmental Protection/USEPA if a facility it intends to use in the performance of this Subcontract is on the USEPA's List of Violating Facilities or if it knows that a facility it intends to use in the performance of this Subcontract has been recommended to be placed on the USEPA's List of Violating Facilities; and (c) in the performance of this Subcontract, the Subcontractor will comply with all requirements of the Clean Air Act and the Clean Water Act, including the requirements of Section 114 of the Clean Air Act and Section 308 of the Clean Water Act, and all applicable clean air standards and clean water standards. In addition, if the Subcontractor awards any lower-tier goods or services (including construction) subcontracts under this Subcontract, the Subcontractor shall physically include this provision in all such subcontracts.

ARTICLE 19 - DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)

19.1. If the price of this Agreement/Contract equals or exceeds \$25,000, the Owner shall not award this Agreement/Contract, nor permit any lower-tier goods or services (including construction) subcontract with a price equaling or exceeding \$25,000 to be awarded, to any party that is debarred or suspended or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549 (Debarment and Suspension).

19.2. The attention of all bidders or prospective contractors (including the Contractor) is directed to the certification/clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", which has been extracted from Appendix B to 40 CFR Part 32 and included as Appendix A to these Supplementary Conditions. The certification/clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" is applicable to this Agreement/Contract if the price of this Agreement/Contract equals or exceeds \$25,000.

19.3. If bidders or prospective contractors (including the Contractor), or any prospective subcontractors at any tier, intend to let any lower-tier goods or services (including construction) subcontracts for any portion of the Work, they shall physically include the certification/clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", which is included as Appendix A to these Supplementary Conditions, in all lower-tier goods and services (including construction) subcontracts with a price equaling or exceeding \$25,000 and in all solicitations for such subcontracts.

ARTICLE 20 - EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

20.1. If the price of this Agreement/Contract exceeds \$10,000, the Contractor, and each construction subcontractor awarded a lower-tier construction subcontract with a price exceeding \$10,000, shall comply with Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), as amended by Executive Order 11375 of October 13, 1967, and as supplemented in United States Department of Labor regulations (41 CFR Part 60).

20.2. The attention of all bidders or prospective contractors (including the Contractor) is directed to the following, all of which are applicable to this Agreement/Contract if the price of this Agreement/Contract exceeds \$10,000:

20.2.1. the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)", which has been extracted from 41 CFR 60-4.2(d) and included as Appendix B to these Supplementary Conditions;

20.2.2. the "Goals and Timetables for Minorities and Females", which are included as Appendix C to these Supplementary Conditions;

20.2.3. the "Equal Opportunity Clause", which has been extracted from 41 CFR 60-1.4(b) and included as Appendix D to these Supplementary Conditions;

20.2.4. the "Notice to Be Posted", which has been extracted from 41 CFR 60-1.42(a) and included as Appendix E to these Supplementary Conditions;

20.2.5. the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)", which have been extracted from 41 CFR 60-4.3(a) and included as Appendix F to these Supplementary Conditions;

20.2.6. the "Certification of Compliance with 41 CFR 60-1.7: Reports and Other Required Information", which is required by 41 CFR 60-1.7(b) and is included as Appendix G to these Supplementary Conditions; and

20.2.7. the "Certification of Nonsegregated Facilities", which is required by 41 CFR 60-1.8(b) and is included as Appendix H to these Supplementary Conditions.

20.3. If bidders or prospective contractors (including the Contractor), or any prospective construction subcontractors at any tier, intend to let any lower-tier construction subcontracts for any portion of the Work, they shall physically include in all lower-tier construction subcontracts with a price exceeding \$10,000 and in all solicitations for such subcontracts the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)", the "Goals and Timetables for Minorities and Females", the "Equal Opportunity Clause", the "Notice to Be Posted", the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)", the "Certification of Compliance with 41 CFR 60-1.7: Reports and Other Required Information", and the Certification of Nonsegregated Facilities", which are included as Appendices B through H to these Supplementary Conditions.

20.4. If the price of this Agreement/Contract exceeds \$10,000, all bidders shall complete and submit to the Owner, with their bids, the "Certification of Compliance with 41 CFR 60-1.7: Reports and Other Required Information", which is included as Appendix G to these Supplementary Conditions. In addition, if bidders (including the Contractor), or any prospective construction subcontractors at any tier, intend to let any lower-tier construction subcontracts for any portion of the Work, they shall obtain the "Certification of Compliance with 41 CFR 60-1.7: Reports and Other Required Information" from each prospective construction subcontractor that may be

awarded a lower-tier construction subcontract with a price exceeding \$10,000 and shall do so at the time bids or offers for each such subcontract are received or at the outset of negotiations for each such subcontract.

20.5. If the price of this Agreement/Contract exceeds \$10,000, the apparent Successful Bidder shall complete and submit to the Owner, within ten calendar days after being notified of being the apparent Successful Bidder, the "Certification of Nonsegregated Facilities", which is included as Appendix H to these Supplementary Conditions. In addition, if the Contractor, or any construction subcontractor at any tier, intends to let any lower-tier construction subcontracts for any portion of the Work, it shall obtain the "Certification of Nonsegregated Facilities" from each prospective construction subcontractor that will be awarded a lower-tier construction subcontract with a price exceeding \$10,000 and shall do so before awarding each such subcontract.

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

20.7. If the price of this Agreement/Contract equals or exceeds \$50,000 and if the Contractor has 50 or more employees, the Contractor shall file with the Florida Department of Environmental Protection (FDEP)/United States Environmental Protection Agency (USEPA), within 30 calendar days after the award of this Agreement/Contract, a report on Standard Form 100 (EEO-1), which has been promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission, and Plans for Progress, unless the Contractor has submitted such a report within 12 months preceeding the date of award of this Agreement/Contract. In addition, the Contractor shall ensure that each construction subcontractor having 50 or more employees and a lower-tier construction subcontract with a price equaling or exceeding \$50,000 also files with the FDEP/USEPA, within 30 calendar days after the award to it of the lower-tier construction subcontract, a report on Standard Form 100 (EEO-1) unless the construction subcontractor has submitted such a report within 12 months preceding the date of award of the lower-tier construction subcontract. (Subsequent reports are to be submitted annually in accordance with 41 CFR 60-1.7(a) or at such other intervals as the Director of the Office of Federal Contract Compliance Programs may require.)

**APPENDIX A TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY  
EXCLUSION - LOWER TIER COVERED TRANSACTIONS

[Note: This certification/clause has been extracted from Appendix B to 40 CFR Part 32 and is applicable to all FDEP-assisted goods and services (including construction) contracts and subcontracts with a price equaling or exceeding \$25,000; this certification/clause is to be included in all FDEP-assisted goods and services (including construction) contracts and subcontracts with a price equaling or exceeding \$25,000 and in all solicitations for such contracts and subcontracts.]

**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 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.
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 which 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, 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.
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 Transactions", 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.

(3) The prospective lower-tier participant also certifies that it and its principals:

(a) 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 anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(b) 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 (3) (a) of this certification; and

(c) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default. Where the prospective lower-tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

**APPENDIX B TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS**

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL  
EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

[Note: This notice has been extracted from 41 CFR 60-4.2(d) and is applicable to all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000; this notice is to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on on all construction work in the covered area, are as follows:

| Timetables | Goals for minority participation for each trade | Goals for female participation in each trade |
|------------|---|--|
|            | Insert goals for 9% each year.                  | Insert goals for 3% each year.               |

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is Florida, Miami-Dade, North Miami.  
(Insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any.)

APPENDIX C TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS

GOALS AND TIMETABLES FOR MINORITIES AND FEMALES

[Note: These goals and timetables are the goals and timetables referred to in Paragraph 2 of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)"; these goals and timetables are to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

**Appendix A**

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally-assisted construction contract or subcontract.

Area covered: Goals for Women apply nationwide.

Goals and Timetables

| Timetable  | Goals (percent) |
|------------|-----------------|
| Indefinite | 6.9             |

**Appendix B-80**

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, federally assisted or nonfederally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this Appendix B-80.

Economic Areas

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| State | Goal (percent) |
|-------|----------------|
|-------|----------------|

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Florida

|  |      |
|--|------|
| 041 Jacksonville, FL:  |      |
| SMSA Counties:   |      |
| 2900 Gainesville, FL .....   | 20.6 |
| FL - Alachua   |      |
| 3600 Jacksonville, FL .....  | 21.8 |
| FL - Baker, Clay, Duval, Nassau, St. Johns   |      |
| Non-SMSA Counties .....  | 22.2 |
| FL - Bradford, Columbia, Dixie, Gilchrist,<br>Hamilton, LaFayette, Levy, Marion, Putnam,<br>Suwannee, Union; GA - Brantley, Camden,<br>Charlton, Glynn, Pierce, Ware |      |
| 042 Orlando - Melbourne - Daytona Beach, FL:   |      |
| SMSA Counties:   |      |
| 2020 Daytona Beach, FL .....   | 15.7 |
| FL - Volusia   |      |
| 4900 Melbourne - Titusville - Cocoa, FL .....  | 10.7 |
| FL - Brevard   |      |
| 5960 Orlando, FL .....   | 15.5 |
| FL - Orange, Osceola, Seminole   |      |
| Non-SMSA Counties .....  | 14.9 |
| FL - Flagler, Lake, Sumter   |      |
| 043 Miami - Fort Lauderdale, FL:   |      |
| SMSA Counties:   |      |
| 2680 Fort Lauderdale - Hollywood, FL .....   | 15.5 |
| FL - Broward   |      |
| 5000 Miami, FL .....   | 39.5 |
| FL - Dade  |      |
| 8960 West Palm Beach - Boca Raton, FL .....  | 22.4 |
| FL - Palm Beach  |      |
| Non-SMSA Counties .....  | 30.4 |
| FL - Glades, Hendry, Indian River, Martin,<br>Monroe, Okeechobee, St. Lucie  |      |

Economic Areas

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| State | Goal (percent) |
|-------|----------------|
|-------|----------------|

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Florida - continued

|  |      |
|--|------|
| 044 Tampa - St. Petersburg, FL:  |      |
| SMSA Counties:   |      |
| 1140 Bradenton, FL .....   | 15.9 |
| FL - Manatee   |      |
| 2700 Fort Myers, FL .....  | 15.3 |
| FL - Lee   |      |
| 3980 Lakeland - Winter Haven, FL .....   | 18.0 |
| FL - Polk  |      |
| 7510 Sarasota, FL .....  | 10.5 |
| FL - Sarasota  |      |
| 8280 Tampa - St. Petersburg, FL .....  | 17.9 |
| FL - Hillsborough, Pasco, Pinellas   |      |
| Non-SMSA Counties .....  | 17.1 |
| FL - Charlotte, Citrus, Collier, DeSoto,<br>Hardee, Hernando, Highlands          |      |
| 045 Tallahassee, FL:   |      |
| SMSA Counties:   |      |
| 8240 Tallahassee, FL .....   | 24.3 |
| FL - Leon, Wakulla   |      |
| Non-SMSA Counties .....  | 29.5 |
| FL - Calhoun, Franklin, Gadsden, Jackson,<br>Jefferson, Liberty, Madison, Taylor |      |
| 046 Pensacola - Panama City, FL:   |      |
| SMSA Counties:   |      |
| 6015 Panama City, FL .....   | 14.1 |
| FL - Bay   |      |
| 6080 Pensacola, FL .....   | 18.3 |
| FL - Escambia, Santa Rosa  |      |
| Non-SMSA Counties .....  | 15.4 |
| FL - Gulf, Holmes, Okaloosa, Walton,<br>Washington                               |      |

**APPENDIX D TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS**

## EQUAL OPPORTUNITY CLAUSE

[Note: This clause has been extracted from 41 CFR 60-1.4(b) and is applicable to all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000; this clause is to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

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 setting forth the provisions of this nondiscrimination clause.

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

(3) The contractor will 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and 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 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**APPENDIX E TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS**

NOTICE TO BE POSTED

[Note: This notice has been extracted from 41 CFR 60-1.42(a) and is the notice referred to in Paragraphs (1) and (3) of the "Equal Opportunity Clause"; this notice is to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW - DISCRIMINATION IS PROHIBITED  
BY THE CIVIL RIGHTS ACT OF 1964 AND BY EXECUTIVE ORDER NO. 11246

Title VII of the Civil Rights Act of 1964 - Administered by:

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 75 or more employees, by Labor Organizations with a hiring hall of 75 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship or Training. After July 1, 1967, employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968, those with 25 or more will be covered.

ANY PERSON

Who believes he or she has been discriminated against

SHOULD CONTACT

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

2401 E Street NW, Washington, D.C. 20506

Executive Order No. 11246 - Administered by:

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

ANY PERSON

Who believes he or she has been discriminated against

SHOULD CONTACT

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

U.S. Department of Labor, Washington, D.C. 20210

**APPENDIX F TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS**

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION  
CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

[Note: These specifications have been extracted from 41 CFR 60-4.3(a) and are applicable to all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000; these specifications are to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

## 1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan

does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

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

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented

in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered

pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

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

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

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

APPENDIX G TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUPPLEMENTARY CONDITIONS

CERTIFICATION OF COMPLIANCE WITH 41 CFR 60-1.7: REPORTS AND OTHER REQUIRED INFORMATION

[Note: This certification is required by 41 CFR 60-1.7(b) and is applicable to all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000; this certification is to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

This certification relates to a construction contract proposed by \_\_\_\_\_, which expects to finance the proposed (insert the name of the Owner) construction contract with assistance from the Florida Department of Environmental Protection (which administers a State revolving fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency). I am the undersigned prospective construction contractor or subcontractor. I certify that...

- (1) I \_\_\_ have/ \_\_\_ have not participated in a previous contract or subcontract subject to the Equal Opportunity Clause and
(2) if I have participated in a previous contract or subcontract subject to the Equal Opportunity Clause, I \_\_\_ have/ \_\_\_ have not filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

I understand that, if I have participated in a previous contract or subcontract subject to the Equal Opportunity Clause and have failed to file all reports due under the applicable filing requirements, I am not eligible, and will not be eligible, to have my bid or offer considered, or to enter into the proposed contract or subcontract, unless and until I make an arrangement regarding such reports that is satisfactory to the office where the reports are required to be filed.

I agree that I will obtain identical certifications from prospective lower-tier construction subcontractors when I receive bids or offers or initiate negotiations for any lower-tier construction subcontracts with a price exceeding \$10,000. I also agree that I will retain such certifications in my files.

\_\_\_\_\_  
(Signature of Authorized Official) (Date)

\_\_\_\_\_  
(Name and Title of Authorized Official [Print or Type])

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(Name of Prospective Construction Contractor or Subcontractor  
[Print or Type])

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(Address and Telephone Number of Prospective Construction Contractor or  
Subcontractor [Print or Type])

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(Employer Identification Number of Prospective Construction Contractor or  
Subcontractor)

APPENDIX H TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUPPLEMENTARY CONDITIONS

CERTIFICATION OF NONSEGREGATED FACILITIES

[Note: This certification is required by 41 CFR 60-1.8(b) and is applicable to all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000; this certification is to be included in all FDEP-assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

This certification relates to a construction contract proposed by \_\_\_\_\_, which expects to finance the proposed (insert the name of the Owner)

construction contract with assistance from the Florida Department of Environmental Protection (which administers a State revolving fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency). I am the undersigned prospective construction contractor or subcontractor. I certify that I do not and will not maintain any facilities I provide for my employees in a segregated manner and that I do not and will not permit my employees to perform their services at any locations under my control where segregated facilities are maintained.

I agree that I will obtain identical certifications from prospective lower-tier construction subcontractors prior to the award of any lower-tier construction subcontracts with a price exceeding \$10,000. I also agree that I will retain such certifications in my files.

\_\_\_\_\_  
(Signature of Authorized Official) (Date)

\_\_\_\_\_  
(Name and Title of Authorized Official [Print or Type])

\_\_\_\_\_  
(Name of Prospective Construction Contractor or Subcontractor [Print or Type])

\_\_\_\_\_  
(Address and Telephone Number of Prospective Construction Contractor or Subcontractor [Print or Type])

\_\_\_\_\_  
(Employer Identification Number of Prospective Construction Contractor or Subcontractor)

## APPENDIX I

## TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

## Davis Bacon Requirements

## FEDERAL LABOR STANDARDS PROVISIONS

## (Davis-Bacon Act, Copeland Act, and Contract Works Hours &amp; Safety Standards Act)

The Project to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**1 Minimum Wages.**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) 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.

(ii) (a) Any class of laborers or mechanics 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. EPA shall approve an additional classification and wage rate and fringe benefits; therefore, only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EPA or its designee 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 EPA or its designee to the Administrator of the Wage and Hour Division, employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise EPA or its designee or will notify EPA or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event that the Contractor, the laborers or mechanics to be employed in the Classification or their representatives, and EPA or its designee do not agree on the proposed classification and wage rate (including the amount designed for fringe benefits, where appropriate), EPA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EPA or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise EPA or its designee or will notify EPA or its designee within the 30-day period that the additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.**

EPA or its designee 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, EPA, or its designee may, after written notice to the contractor, sponsor, applicant, or owners, 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. EPA or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

### **3. Payrolls and Basic Records.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to EPA or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owners, as the case may be, for transmission to EPA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U. S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(I) and that such information is correct and complete;

(2) 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 29 CFR Part 3;

(3) 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.

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

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

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

**4. Apprentices and Trainees.**

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

determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually 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 the determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

#### **5. Compliance with Copeland Act Requirements.**

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.**

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

**7. Contract Termination, Debarment.**

A breach of the contract clauses in 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 referenced 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 EPA or its designee, the U. S. Department of Labor, or the employees or their representatives.

**10. Certification of Eligibility.**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U. S. C., Federal Housing Administration transactions, provides in part Whoever, for the purpose of. . .influencing in any way the action of such Administration. . .makes, utters or publishes any statement, knowing the same to be false. . .shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

**11. Complaints, Proceedings, or Testimony by Employees.**

A. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any

proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** As used in the 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 subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore 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 subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. EPA or its designee 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 contract, 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 subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety**

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54.83 State 96).

- (3) The contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**12. Guidance to Contractor for Compliance with Labor Standards Provisions**

a) Contracts with Two Wage Decisions

If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification **must** be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

b) Complying with Minimum Hourly Amounts

1) The minimum hourly amount due to a worker in each classification is the total of the amounts in the Rates and Fringe Benefits (if any) columns of the applicable wage decision.

2) The contractor may satisfy this minimum hourly amount by any combination of cash and bona fide fringe benefits, regardless of the individual amounts reflected in the Rates and Fringe Benefits columns.

3) A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.

4) The hourly value of the fringe benefit is calculated by dividing the contractor's annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)

c) Overtime

For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and Related Acts only establishes minimum rates and does not address overtime; the Contract Work Hours Act contains the overtime

requirement and uses basic rate of pay as the base for calculation, not the minimum rates established by the Davis-Bacon and Related Acts.)

d) Deductions

Workers who have deductions, not required by law, from their pay must authorize these deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.

e) Classifications Not Included in the Wage Decision

If a classification not in the wage decision is required, please advise the owner's representative in writing and identify the job classification(s) required. In some instances, the State agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a minimum rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The U.S. Department of Labor (USDOL) must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

f) Supervisory Personnel

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.

g) Sole Proprietorships / Independent Contractors / Leased Workers

The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is

subject to the labor standards provisions, including minimum wages and overtime. His status as owner is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

#### h) Apprentices / Helpers

A worker may be classified as an apprentice **only if participating in a federal or state program**. Documentation of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of journeyman rate. For Davis-Bacon Act purposes, the hourly rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the trade depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a helper. As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.