

AGREEMENT
BETWEEN DEPARTMENT AND CONTRACTOR
FOR CONSTRUCTION CONTRACT

Financial Project No: 412994-3-52-01

Description:
Central Florida Commuter Rail Transit (CFCRT)
Station Finishes

Note: This document is prepared, in part, from the document, produced by the Engineers Joint Contract Documents Committee, document EJCDC No. C-700 (2007 Edition). It has been modified and is subject to EJCDC copyright protection.

**AGREEMENT
BETWEEN DEPARTMENT AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

Contract No.: BDT 74
F.E.I.D. No: F36-3286318
Appropriation No.: SB 2000, Line 1918C
Procurement No: RFP-DOT-11-12-5007-STA1
D.M.S. Catalog Class No.: 973-160, 973-166

BY THIS AGREEMENT, effective as of the 24 day of February 2012, the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter called "Department") and ARCHER WESTERN CONTRACTORS, LTD., INC., (hereinafter called "Contractor"), agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Central Florida Commuter Rail Transit (CFCRT) Station Finishes.

(For informational purposes, the Project Specifications may rephrase this description as "Central Florida Commuter Rail Transit – Initial Operating Segment – Station Finishes-Package #1," and the Project Plans may rephrase this description as "Central Florida Commuter Rail Transit – IOS Stations – Pkg 1".)

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally identified by the Department as follows:

Project Financial Numbers: 412994-3-52-01, 412994-3-52-03, 412994-3-52-04, 412994-3-52-06, 412994-3-52-12

(For informational purposes, the Project may be referred to hereinafter in Project Documents as 412994-3-52-01.)

ARTICLE 3 – CONTRACT TIMES

- 3.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within 430 days after the date when the Contract Time commences to run, as provided in Paragraph 2.07 of the General Conditions, and completed and ready for Final Payment in accordance with Paragraph 14.13 of the General Conditions within 460 days after the date when the Contract Time commences to run.

3.03 *Liquidated Damages*

- A. Contractor and Department recognize that time is of the essence as stated in Paragraph 3.01 above and that Department will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Department if the Work is not completed on time. Accordingly, instead of requiring any such proof, Department and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Department for each calendar day that expires after the time specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, for Substantial Completion until the Work is substantially complete, the dollar amount as specified in the General Conditions, paragraph 15.04.

ARTICLE 4 – CONTRACT PRICE

- 4.01 Department shall pay Contractor the Contract Price of \$27,584,500.00, for completion of the Work in accordance with the Contract Documents as a lump sum price, payable in accordance with the General Conditions.

ARTICLE 5 – CONTRACT DOCUMENTS

5.01 *Contents*

- A. The Contract Documents which comprise the entire agreement between Department and Contractor concerning the Work and which are incorporated herein by this reference consist of the following:
1. This Agreement.
 2. Standard General Conditions of the Contract Between the Department and Contractor, which are referred to in the Contract Documents as the General Conditions.
 3. Supplementary Conditions.
 4. Specifications.
 5. Plans.
 6. Performance and Payment Bond.

7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. All written Amendments, Supplemental Agreements, Contingency Work Orders, a letter from the Engineer granting additional Contract Time, and other documents modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

B. There are no Contract Documents other than those listed above in this Article 5. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 6 – MISCELLANEOUS

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

6.02 Assignment of the Contract is addressed in the General Conditions, Paragraph 6.04 A.

6.03 The Contractor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Engineer and securing the Department's prior written consent.

6.04 The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.

6.05 If the Contractor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:

A. If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.

B. Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.

- C. Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- 6.06 The Contractor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Contractor further covenants and agrees that when a former state employee is employed by the Contractor, the Contractor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- 6.07 An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- 5.08 The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- 6.09 Pursuant to Section 216.347, Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
- 6.10 This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes does not apply.
- 6.11 This Agreement will not be renewed.
- 6.12 The Contractor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Contractor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. Contractor agrees to include this provision in all its subcontracts under this Agreement.
- 6.13 This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or

written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Contractor.

- 6.14 It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- 6.15 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 6.16 In any legal action related to this Agreement, instituted by either party, the Contractor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Contractor, the Contractor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

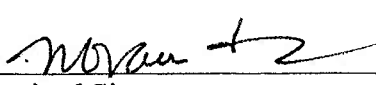
ARCHER WESTERN CONTRACTORS,
LTD., INC.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: 
(Authorized Signature)

David B. Casey
(Print/Type)

Title: Vice President

By: 
(Authorized Signature)

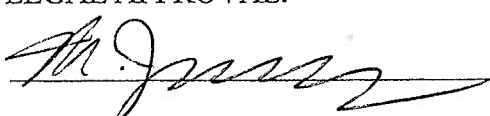
Noranne B. Downs
(Print/Type)

Title: District Secretary

FOR DEPARTMENT USE ONLY

APPROVED:

Contractual Services Office

LEGAL APPROVAL:


STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN
DEPARTMENT AND CONTRACTOR

Financial Project No: 412994-3-52-01

Description:
Central Florida Commuter Rail Transit (CFCRT)
Station Finishes

Note: This document is prepared, in part, from the document, produced by the Engineers Joint Contract Documents Committee, document EJCDC No. C-700 (2007 Edition). It has been modified and is subject to EJCDC copyright protection.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY	1
1.01 <i>Abbreviations</i>	1
1.02 <i>Defined Terms</i>	2
1.03 <i>Terminology</i>	6
ARTICLE 2 – PRELIMINARY MATTERS	7
2.01 <i>Convicted Vendor List</i>	7
2.02 <i>Lump Sum Contract</i>	7
2.03 <i>Audit of Contractor's Records</i>	7
2.04 <i>Public Records</i>	8
2.05 <i>Delivery of Bonds and Evidence of Insurance</i>	8
2.06 <i>Commencement of Contract Time, Notice to Proceed</i>	8
2.07 <i>Compliance with Time Requirements and Beginning Work</i>	8
2.08 <i>Schedule of Values, Schedule of Submissions, Contract Schedule</i>	9
2.09 <i>Revisions and Acceptance of Schedules</i>	13
2.10 <i>Partnering</i>	14
2.11 <i>Preconstruction Conference</i>	15
ARTICLE 3 – CONTRACT DOCUMENTS, INTENT, AMENDING, REUSE	15
3.01 <i>Intent and Order of Preference</i>	15
3.02 <i>Reference Standards</i>	15
3.03 <i>Reporting and Resolving Discrepancies</i>	16
3.04 <i>Amending and Supplementing Contract Documents</i>	16
3.05 <i>Reuse of Documents</i>	16
ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; UTILITIES; REFERENCE POINTS; CONTAMINATED MATERIALS AT SITE	17
4.01 <i>Availability of Lands</i>	17
4.02 <i>Differing Site Conditions</i>	17
4.03 <i>Utilities</i>	17
4.04 <i>Reference Points</i>	17
4.05 <i>Contaminated Materials at Site</i>	18
ARTICLE 5 – BONDS AND INSURANCE.....	18
5.01 <i>Performance, Payment, and other Bonds</i>	18
5.02 <i>Certificates of Insurance</i>	19
5.03 <i>Contractor's Insurance</i>	20
5.04 <i>Waiver of Rights</i>	22
5.05 <i>Receipt and Application of Insurance Proceeds</i>	23
5.06 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	23
ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES	23
6.01 <i>Supervision and Superintendence</i>	23

6.02	<i>Labor</i>	24
6.03	<i>Services, Equipment, and Materials</i>	24
6.04	<i>Subletting or Assigning of Contracts; Equipment Rental Agreements</i>	25
6.05	<i>Patented Devices, Materials and Processes</i>	26
6.06	<i>Permits and Licenses</i>	26
6.07	<i>Legal Requirements and Responsibility to the Public</i>	27
6.08	<i>Disadvantaged Business Enterprise Program</i>	35
6.09	<i>Taxes</i>	38
6.10	<i>Use of Site and Other Areas</i>	38
6.11	<i>Record Documents</i>	39
6.12	<i>Safety and Protection</i>	39
6.13	<i>Safety Representative</i>	40
6.14	<i>Hazard Communication Programs</i>	40
6.15	<i>Emergencies</i>	40
6.16	<i>Plans and Shop Drawings and Sample</i>	40
6.17	<i>Continuing the Work</i>	48
6.18	<i>Contractor's General Warranty and Guarantee</i>	48
6.19	<i>Responsibility for Damages, Claims, etc.</i>	49
6.20	<i>Delegation of Professional Design Services</i>	49
ARTICLE 7 – OTHER WORK OR COORDINATION AT THE SITE		49
7.01	<i>Other Work at Site; Utility Work; Work within Railroad Right-of-Way</i>	49
7.02	<i>Utilities</i>	50
7.03	<i>Railroad</i>	50
ARTICLE 8 – DEPARTMENT'S RESPONSIBILITIES		50
8.01	<i>General</i>	50
ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION		50
9.01	<i>Department's Representative</i>	50
9.02	<i>Project Representative</i>	51
9.03	<i>Authorized Alterations or Changes in Work</i>	51
9.04	<i>Rejecting Defective Work</i>	51
9.05	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	52
ARTICLE 10 – CHANGES IN THE WORK		52
10.01	<i>Changes in the Work</i>	52
10.02	<i>Unforeseeable Work</i>	58
10.03	<i>Unauthorized Changes in the Work</i>	59
10.04	<i>Execution of Supplemental Agreements and Claims</i>	59
10.05	<i>Notification to Surety</i>	59
ARTICLE 11 – CLAIMS BY CONTRACTOR		59
11.01	<i>General</i>	59
11.02	<i>Notice of Claim</i>	60
11.03	<i>Content of Written Claim</i>	61
11.04	<i>Action on Claim</i>	62
11.05	<i>Pre-Settlement and Pre-Judgment Interest</i>	62
11.06	<i>Compensation for Extra Work or Delay</i>	63

11.07	<i>Mandatory Claim Records</i>	63
11.08	<i>Claims For Acceleration</i>	64
11.09	<i>Certificate of Claim</i>	64
11.10	<i>Non-Recoverable Items</i>	64
11.11	<i>Exclusive Remedies</i>	64
11.12	<i>Settlement Discussions</i>	64
11.13	<i>Personal Liability of Public Officials</i>	65
11.14	<i>Auditing of Claims</i>	65
ARTICLE 12 – CHANGE OF CONTRACT TIME, COMPUTATION OF CONTRACT TIME		66
12.01	<i>Change in Contract Time</i>	66
12.02	<i>Computation of Contract Time</i>	67
12.03	<i>Adjusting Contract Time</i>	67
ARTICLE 13 – GENERAL INSPECTION REQUIREMENTS; STOPPING WORK; REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK		70
13.01	<i>General Inspection Requirements</i>	70
13.02	<i>Department May Stop the Work</i>	71
13.03	<i>Correction or Removal of Defective Work</i>	71
ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION		71
14.01	<i>Schedule of Values</i>	71
14.02	<i>Invoice or Bill Requirements</i>	71
14.03	<i>Scope of Payments</i>	72
14.04	<i>Deleted Work</i>	73
14.05	<i>Progress (Partial) Payments</i>	73
14.06	<i>Record of Construction Materials</i>	76
14.07	<i>Disputed Amounts Due the Contractor</i>	76
14.08	<i>Contractor's Warranty of Title</i>	76
14.09	<i>Substantial Completion</i>	76
14.10	<i>Partial Utilization</i>	77
14.11	<i>Final Inspection</i>	77
14.12	<i>Final Application for Payment</i>	78
14.13	<i>Final Payment and Final Acceptance</i>	78
14.14	<i>Interest Due on Delayed Final Payments</i>	78
14.15	<i>Offsetting Payment</i>	78
14.16	<i>Recovery Rights, Subsequent to Final Payment</i>	79
ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION		79
15.01	<i>Suspension of the Work</i>	79
15.02	<i>Termination of Contract for Default</i>	81
15.03	<i>Termination of Contract for Convenience</i>	83
15.04	<i>Liquidated Damages for Failure to Substantially Complete the Work</i>	83
15.05	<i>Release of Contractor's Responsibility</i>	85
15.06	<i>Recovery of Damages Suffered by Third Parties</i>	85
ARTICLE 16 – DISPUTE RESOLUTION		85
16.01	<i>Methods and Procedures</i>	85

ARTICLE 17 – MISCELLANEOUS	92
17.01 <i>Computation of Times</i>	92
17.02 <i>Cumulative Remedies</i>	92
17.03 <i>Survival of Obligations</i>	92
17.04 <i>Headings</i>	92
17.05 <i>PUR 1000</i>	92

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Abbreviations The following abbreviations, when used in the Contract Documents, represent the full text shown.

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
FTA	Federal Transit Administration
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
ISO	International Organization for Standards
MSTCSD	Minimum Specifications for Traffic Control Signals and Devices
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
SI	International System of Units
SSPC	Society of Protective Coatings
UL	Underwriters' Laboratories

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown.

1.02 Defined Terms

- A. The following terms, when used in the Contract Documents, have the meaning described.
1. *Agreement*—The written instrument which is evidence of the agreement between Department and Contractor covering the Work.
 2. *Bidder* - An individual, firm, or corporation submitting a proposal for the proposed work.
 3. *Bridge* - A structure, including supports, erected over a depression or over an obstruction such as water, highway or railway, or for elevated roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the roadway, of more than 20 feet between the inside faces of end supports. A multiple-span box culvert is considered a bridge, where the length between the extreme ends of the openings exceeds 20 feet.
 4. *Calendar Day (Day)* - Every day shown on the calendar, ending and beginning at midnight.
 5. *Contingency Work Order* - A written work order issued by the Department pursuant to a contingency pay item or a contingency supplemental agreement.
 6. *Contract* - The term "Contract" means the entire and integrated agreement between the parties hereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.
 7. *Contract Bond* - The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.
 8. *Contract Claim (Claim)* - - A written demand submitted to the Department by the Contractor in compliance with Paragraph 11.03 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.
 9. *Contract Documents* - the items so designated in the Agreement.
 10. *Contract Time* - The number of calendar days allowed for completion of the Contract work, including authorized time extensions.
 11. *Contract Price* - The amount specified in the Agreement as the same may be changed from time to time pursuant to Supplemental Agreements under the terms and conditions of these General Conditions and Supplementary Conditions.

12. *Contractor* - Contractor – the individual, firm, joint venture, or company contracting with the Department to perform the work.

13. *Contractor's Engineer of Record*.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a pre-qualified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a pre-qualified Specialty Engineer. For items of the permanent work declared by the State Construction Office to be "major" or "structural", the work performed by a pre-qualified Specialty Engineer must be checked by another pre-qualified Specialty Engineer. An individual Engineer may become pre-qualified in the work groups listed in the Rules of the Department of Transportation, Chapter 14-75, if the requirements for the Professional Engineer are met for the individual work groups. Pre-qualified Specialty Engineers are listed on the State Construction Website. Pre-qualified Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the plans.

14. *Controlling Work Items* - The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.
15. *Culverts* – Any structure not classified as a bridge that provides an opening under the roadway.
16. *Delay* - Any unanticipated event, action, force or factor which extends the Contractor's time of performance of any controlling work item under the Contract. The term "delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the Contractor, or the Contractor's subcontractors, materialmen, suppliers or other agents. This term does not include "extra work".
17. *Department* – State of Florida Department of Transportation.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The Director, Office of Construction, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.
20. *Engineer of Record* - The Professional Engineer or Engineering Firm registered in the State of Florida that develops the criteria and concept for the project, performs the analysis, and is responsible for the preparation of the Plans and Specifications. The Engineer of Record may be Departmental in-house staff or a consultant retained by the Department.

The Contractor shall not employ the Engineer of Record as the Contractor's Engineer of Record or as a Specialty Engineer.
21. *Equipment* - The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the construction and acceptable completion of the work.
22. *Extra Work* - Any "work" which is required by the Engineer to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a "delay".
23. *Highway, Street, or Road* - A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.
24. *Holidays* - Days designated by the State Legislature or Cabinet as holidays, which include, but are not limited to, New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the following Friday, and Christmas Day.
25. *Inspector* - An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor.
26. *Laboratory* - The official testing laboratory used by the Department.
27. *Major Item of Work* - Any item of work having an original Contract value in excess of 5% of the original Contract amount.
28. *Materials* - Any substances to be incorporated in the work under the Contract.
29. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
30. *Notice to Proceed*—A written notice given by Department to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
31. *Partial Utilization* - Use by the Department of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *Plans* – The approved plans, including reproductions thereof, showing the location, characters, dimensions, and details of the work.
33. *Right-of-Way* - The land that the Department has title to, or right of use, for the road and its structures and appurtenances, and for material pits furnished by the Department.
34. *Roadbed* - The portion of the roadway occupied by the subgrade and shoulders.
35. *Roadway* - The portion of a highway within the limits of construction.
36. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
37. *Schedule of Values*—A schedule, prepared and maintained by Contractor and accepted by Department which divides the Work into various major components, units or divisions and which assigns a portion of the Contract price to each of such components, units or divisions.
38. *Secretary* – Secretary of Transportation, State of Florida Department of Transportation, acting directly or through an assistant or other representative authorized by him; the chief officer of the Department of Transportation.
39. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Department upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Department which are designated for the use of Contractor.
40. *Specialty Engineer* - A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the project work or for special items of the permanent works not fully detailed in the plans and required to be furnished by the Contractor such as but not limited to pot bearing designs, non-standard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may also provide designs and details for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”. The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant.

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if he has the following qualifications:

- (1) Registration as a Professional Engineer in the State of Florida.
- (2) The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

41. *Specifications*—That part of the Contract Documents consisting of written — technical descriptions of materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative details -applicable thereto.
42. *Substantial Completion*—The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended, without any material impairment of function. The terms “substantially complete” and “substantially completed” refer to Substantial Completion. The term Substantial Completion may be used in the Contract Documents in reference to a particular portion of the Work, in which case the term will be applied as defined above only to that portion of the Work; otherwise it shall be deemed to refer to the total Work.
43. *Superintendent* - The Contractor’s authorized representative in responsible charge of the work.
44. *Supplemental Agreement* - A written order which is signed by Contractor and Department which authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
45. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
46. *Unilateral Payment* - A payment of money made to the Contractor by the Department pursuant to Section 337.11 (12), Florida Statutes (2010), for sums the Department determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against the Department for payment of any additional sums the Contractor claims are due for the work.
47. *Work* – all labor, materials and incidentals required to execute and complete the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.
48. *Working Day* - Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.

1.03 Terminology

A. *Intent of Certain Terms or Adjectives:*

In order to avoid cumbersome and confusing repetition of expressions in these General Conditions, Supplementary Conditions, and Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where “acceptable, accepted, approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable,

suspended, unacceptable, or unsatisfactory,” it shall be understood as if the expression were followed by the words “by the Engineer,” “to the Engineer,” or “of the Engineer.”

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Convicted Vendor List*

A. Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following:

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

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

2.02 *Lump Sum Contract*

A. This is a Lump Sum Contract with only one pay item listed in the Contract.

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

Payment for all work in this Contract will be made under:

Item - Lump Sum Contract LS

Pay adjustments as shown in the Contract Documents, regardless of where those pay adjustments are referenced, shall not apply, except as provided in Paragraph 14.03.

2.03 *Audit of Contractor's Records.*

A. Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to Paragraph 14.16.

The Department may also require submittal of the records from either the prime contractor, the subcontractor, or both. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the project work.

If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department.

2.04 *Public Records*

- A. Allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with this Contract. Failure to grant such public access will be grounds for immediate termination of this Contract by the Department pursuant to Paragraph 15.02.

2.05 *Delivery of Bonds and Evidence of Insurance*

- A. Contractor shall deliver to Department such bonds as Contractor may be required to furnish in accordance with Article 5, and shall deliver such certificates (and other evidence of insurance which Department may reasonably request) verifying the existence of the insurance which Contractor is required to purchase and maintain in accordance with Article 5.

2.06 *Commencement of Contract Time, Notice to Proceed*

- A. The date on which Contract Time begins is the date indicated in the Notice to Proceed, which date will be not later than 14 calendar days from the date that the Notice to Proceed is sent to Contractor.

2.07 *Compliance with Time Requirements and Beginning Work*

- A. *Compliance with Time Requirements:* Commence work in accordance with the accepted working schedule and provide sufficient labor, materials and equipment to complete the work within the time limit. Should the Contractor fail to furnish sufficient and suitable equipment, forces, and materials, as necessary to prosecute the work in accordance with the required schedule, the Engineer may withhold all payments that are, or may become due, or suspend the work until the Contractor corrects such deficiencies.
- B. *Beginning Work:* Notify the Engineer not less than five days in advance of the planned start day of work. Upon the receipt of such notice, the Engineer may give the Contractor Notice to Proceed and may designate the point or points to start the work. In the Notice to Proceed, the Engineer may waive the five day advance notice and authorize the Contractor to begin immediately. Notify the Engineer in writing at least two days in advance of the starting date of important features of the work.

Do not commence work under the Contract until after the Department has issued the Notice to Proceed. The Department will issue the Notice to Proceed within 20 days calendar days, excluding Saturdays, Sunday and state holidays, after execution of the Agreement.

2.08 *Schedule of Values, Schedule of Submissions, Contract Schedule*

A. *Submission of Schedules*: Within 30 days after execution of the Contract or at the preconstruction conference, whichever is earlier, submit to the Engineer the following schedules for the project.

1. A Schedule of Values for all of the Work with back-up documentation showing quantities and prices of items as well as allocation of profit and overhead which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such schedule must be based on a reasonable division of the Contract Price amongst the items of work consistent with the accepted Contract Schedule. No front end loading or unbalancing of costs of profits will be permitted.
2. A Schedule of Submittals and the times for submitting, reviewing and processing each submittal; and
3. A Contract Schedule.
 - a. *Contract Schedule* : Submit to the Engineer for acceptance a Critical Path Method (CPM) Contract Schedule for the project within 30 calendar days after execution of the Contract or at the preconstruction conference, whichever is earlier.

The Contract Schedule shall include detailed schedule diagrams and schedule data as described below for the entire Contract Period. The Contract schedule shall be consistent with the Contract Maintenance of Traffic plan, showing activities for each discrete Contract activity to be accomplished within each Maintenance of Traffic phase. Include activities for deliverables and reviews in the schedule. Sufficient liaison shall be conducted and information provided to indicate coordination with utility owners having facilities within the project limits. The schedule must reflect the utility adjustment schedules included in the Contract Documents, unless changed by mutual agreement of the utility company, the Contractor and the Department

Failure to include any element of work or any activity relating to utility work will not relieve the Contractor from completing all work within the Contract Time at no additional time or cost to the Department, notwithstanding the acceptance of the schedule by the Department.

- b. *Schedule Submissions*: Develop the schedule in Precedence Diagram Method (PDM) format. All schedule submittals, shall have a copy of the schedule files on a Windows compatible CD or DVD attached. The files shall be in a Primavera format. Make sure to use "Back up" menu selection and ensure that the option "Remove access list during backup" is checked.

Each schedule submission and monthly update shall include a minimum of 4 items:

- (1) A Critical Path Method (CPM) Network Diagram in time-scale logic diagram, by week starting on Monday, grouped (banded) by phase and sorted by early start days. Prominently identify the critical path activities, defined as the longest continuous path of work activities. Submit the Network Diagram, printed in color on D size, 22 by 34 inch or E size, 34 by 44 inch paper. The network diagram shall contain, as a minimum, the following information for each schedule activity: identification, activity description, total duration, remaining duration, early start date, late finish date, and total float.
 - (2) A report with the following schedule activity information for each construction activity: identification, description, original duration, remaining duration, early start, early finish, total float, percent complete, and budgeted cost. The bar chart diagram shall not be included in this report. It will be submitted on 8.5 by 11 inch paper.
 - (3) A schedule narrative report describing current project schedule status and identifying potential delays. This report will include a description of the progress made since the previous schedule submission and objectives for the upcoming 30 calendar days. It will be submitted on 8.5 by 11 inch paper. This report shall at a minimum include the following information:
 - (A) This report shall indicate if the project is on schedule, ahead of schedule or behind schedule. If the project is ahead of schedule or behind schedule, the report shall include the specific number of calendar days. If the project is behind schedule, the report shall include a detailed recovery plan that will put the project back on schedule or include a properly supported request for Time Extension.
 - (B) The report will describe the current critical path of the project and indicate if this has changed in the last 30 calendar days. Discuss current successes or problems that have affected either the critical path's length or have caused a shift in the critical path within the last 30 calendar days. Identify specific activities, progress, or events that may reasonably be anticipated to impact the critical path within the next 30 calendar days, either to affect its length or to shift it to an alternate path.
 - (C) List all schedule logic or duration changes that have been made to the schedule since the previous submission. For each change, describe the basis for the change and specifically identify the affected activities by identification number.
 - (D) Identify any and all activities, either in progress or scheduled to occur within the following 30 days that require Department participation, review, approval, etc.
 - (4) A copy of the schedule files on a Windows compatible CD or DVD formatted in the latest Primavera product.
- c. *Schedule Content:* All schedule submissions shall comply with the following content guidelines as appropriate to the specific submission:

Outline Schedule Diagrams and Data shall show the sequence, order, and interdependence of major construction milestones and activities. Include ordering and procurement of major materials and equipment, long-lead time items, and key milestones identified by the Contract. Identify planned work schedule(s) and include all non-workdays. Provide a description of each major construction activity or key milestone.

Detailed Schedule Diagrams shall include activity number, description, early dates, float, and all relationships (i.e. logic ties), resources and costs. Show the sequence, order, and interdependence of activities in which the work is to be accomplished. Include allowance for Department oversight, acceptance and return of submittals, samples and shop drawings where Department acceptance is specifically required (in accordance with Paragraph 6.16 C.6). In addition to construction activities, detailed network activities shall include the submittals, procurement, and Department or Utility activities impacting progress:

- (1) Submittal activities shall include oversight and acceptance of submittals. If the Department's action on any submittal is "Not Accepted" or "Revise and Resubmit", a new series of submittal preparation activities shall be inserted into the schedule. Predecessor for the new submittal preparation activity will be the original acceptance activity and the successor of the new acceptance activity will be the fabrication/delivery activity for the equipment or material.
- (2) Procurement activities shall include all materials and equipment, receipt of materials with estimated procurement costs of major items for which payment of stockpiled materials will be requested in advance of installation, fabrication of special material and equipment, and their installation and testing.
- (3) Show activities of the Department or Utilities that affect progress and contract-required dates for completion of all or parts of the work.

Detailed Schedule Data: shall conform to the following:

- (1) All activities shall be assigned to a specific calendar within the software. Specific calendars will be defined within the software to include planned work days. These calendars will include both Contractor and Contract defined holidays and suspension days as non-workdays.
- (2) Each schedule activity shall be cost loaded. Activity cost loading shall be consistent with the bid breakdown. The sum total of the activity cost loading shall be equal to the current contract value, and should not include bid items.
- (3) At a minimum, each schedule activity shall contain codes by:
 - (A) Responsibility: including, but not be limited to, Department, Utility, Contractor/Subcontractor, Supplier/Vendor, Consultant, etc.
 - (B) Phasing: identify the appropriate Maintenance of Traffic phase or subphase.

- (4) Key milestones as identified by contract. At a minimum, the start and finish of each Maintenance of Traffic phase or subphase shall be represented by a milestone activity.
 - (5) All non-procurement activities must be less than or equal to 20 workdays unless approved by the Engineer to be greater by the Engineer.
 - (6) Detailed description of each activity. In each activity, give quantity and unit of measure so that the amount of work the activity involves is clearly communicated.
 - (7) Only two (2) open-ended activities (the first and the last) are allowed.
 - (8) Constraints shall only be used for "Project Start," and "Project Completion." Constraints cannot override logic. The use of any other imposed constraints is not allowed without specific approval by the Engineer. Any other desired constraints must be submitted to the Engineer with the rationale for the use of each desired additional constraint. If allowed by the Engineer, the rationale should be recorded in the activity's log field. Mandatory constraints (start and finish) violate network logic and shall not be used.
 - (9) Out of sequence progress, if applicable, shall be handled through Retained Logic. Use of the Progress Override option is not appropriate for this project and will not be allowed.
 - (10) Progress shall be calculated based on percent complete.
 - (11) All changes to activities shall be recorded with a note in the activity log field. The log shall include, as a minimum, the date and reason for the change, as well as reference to a document wherein the Engineer acknowledges and accepts the change.
 - (12) The use of resource leveling, either manual or automatic, is prohibited.
- d. *Weekly Meetings:* Attend weekly meetings scheduled by the Engineer to discuss Contract progress, near term scheduled activities, including utility relocations, problems and their proposed solutions. Submit a Two-Week "Look Ahead" Planning Schedule at each weekly meeting, showing the items of work planned for the next two weeks. Develop the schedule in Bar Chart format, identifying current and planned activities and related Contract Schedule work activities, including subcontractor work. Designate all activities that are controlling work items as determined by the currently accepted Contract Schedule. A report shall be submitted at each weekly meeting identifying schedule activity progress including actual start or finish dates achieved for any activities.
- e. *Float:* Is also known as slack time or slide time; it is defined as the amount of time the finish of an activity can be delayed. Two kinds of float are possible: Total float is how much an activity can be delayed without affecting the finish date of the project or an intermediate deadline (constraint); it is the difference between the late finish date and the early finish date. Free float is how much an activity can be delayed without affecting its earliest successor.

Float is not for the exclusive use or benefit of either the Department or the Contractor.

Use of float suppression techniques, such as preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), special lead/lag logic restraints, zero total or free float constraints, extended activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the project schedule or its updates. The use of Resource Leveling (or similar software features) used for the purpose of artificially adjusting activity durations to consume float and influence the critical path is expressly prohibited.

Negative float shall not be a basis for requesting time extensions. Any extension of time shall be addressed in accordance with Paragraph 2.08 A.3.f. below, Time Extensions. Scheduled completion date(s) that extend beyond the contract completion date (evidenced by negative float) may be used in computations for assessment of payment withholdings. The use of this computation is not to be construed as a means of acceleration.

- f. *Time Extensions:* The Contractor is responsible for submitting a request for Contract Time extension in accordance with Paragraph 12.03 B. An extension of time for performance shall be considered only to the extent that a delay to an activity or activities exceeds the total float along the project critical paths within the current approved schedule.

As a minimum, time extension requests shall contain:

- (1) A descriptive summary of the changes
- (2) An analysis of project impact
- (3) A fragnet that shows the impacted activities before the change
- (4) A fragnet that shows the impacted activities after the change.

Time extensions shall not be considered for proposals that do not include full documentation for the schedule change. Once a change has been approved by the Engineer, the specific activities and the overall schedule must be updated.

- g. *Performance of Work:* By submitting a schedule the Contractor is making a positive assertion that the project will be constructed in the order indicated on the schedule. Prosecute the work in accordance with the latest accepted Working Schedule. Any costs associated with meeting milestones and completing the project within the authorized Contract Time will be borne solely by the Contractor.
- h. *As-Built Schedule:* As a condition for Final Acceptance of the project, submittal of an as-built schedule which describes the actual order and start and stop times for all activities by the Contractor is required.

2.09 Revisions and Acceptance of Schedules

- A. The Engineer will have 30 days to accept the Schedule of Values, Schedule of Submittals, and Contract Schedule, or to schedule a meeting with the Contractor to resolve any problems that

prevent acceptance of the schedules. Attend the meeting scheduled by the Engineer, and submit corrected schedules to the Engineer within seven days after the meeting. The process will be continued until the schedules are accepted by the Engineer.

- B. Submit monthly updates of the Contract Schedule within 7 calendar days before the monthly deadline for submitting an invoice as stated in Paragraph 14.02 A.2.
- C. The Engineer will withhold monthly payments due for failure of the Contractor to submit acceptable initial schedules or submit Contract Schedule monthly updates within the time frame described herein; provided that the withholding of progress payments shall not be the exclusive remedy of Department for failure of contractor to timely submit acceptable schedules.

2.10 Partnering

- A. For this Contract, a non-bid pay item in the Lump Sum amount of \$16,500.00 has been established for Partnering. The objective of Partnering is to establish a partnership charter and action plan for the Contractor, the Engineer and other parties impacted by the activities covered under this Contract to identify and achieve reciprocal goals. These objectives may be met through participation in a major workshop held as early as possible after the Contract is awarded and follow-up workshops held periodically throughout the duration of the Contract.

As early as possible and prior to the preconstruction conference, meet with the Department's District Construction Engineer and plan an initial partnering/team building workshop. At this planning session, select a workshop facilitator, suitable to the District Construction Engineer, from the Department approved list of facilitators maintained by the Quality Initiatives Office. Additionally, the agenda, duration, location, time, and attendees for the initial workshop should be determined. Attendees should include the Department's District Construction Engineer and key project personnel, the Contractor's Superintendent and key personnel as well as other project or field level personnel.

Partnering workshops may be held periodically throughout the duration of the Contract if authorized by the District Construction Engineer.

The Department will reimburse the Contractor based on actual invoice amounts for the following costs associated with Partnering:

1. Meeting room.
2. Facilitator fees.
3. Travel expenses of the facilitator, in accordance with Section 112.061, Florida Statutes.

The Department will not reimburse the Contractor for any other expenses.

Payment will be the actual cost prorated as a percent of the Lump Sum amount.

2.11 Preconstruction Conference

- A. Immediately after awarding the Contract but before the Contractor begins work, the Engineer will call a preconstruction conference at a place the Engineer designates to go over the construction aspects of the project. Attend this meeting, along with the Department and the various utility companies that will be involved with the road construction.

ARTICLE 3 – CONTRACT DOCUMENTS, INTENT, AMENDING, REUSE

3.01 Intent and Order of Preference

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Department.
- C. In cases of discrepancy amongst the Contract Documents, the governing order of documents is as follows:
 - 1. Supplementary Conditions Section 2 only – FTA Terms and Conditions
 - 2. Performance and Payment Bond
 - 3. Specifications
 - 4. Plans
 - 5. Agreement
 - 6. Supplementary Conditions Section 1 (Not including Section 2)
 - 7. General Conditions

Computed dimensions govern over scaled dimensions.

3.02 Reference Standards

- A. *Standards, Specifications, Codes, Laws, and Regulations*
 - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or

Regulations in effect on the Effective Date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

- A. Errors or Omissions in Contract Documents - Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 - 1. A Supplemental Agreement. Section 337.11 of the Florida Statutes as amended, which prescribes certain limitations on the use of supplemental agreements, is a part of the Contract;
 - 2. A Contingency Work Order;
 - 3. A Written Amendment; or
 - 4. A letter from the Engineer granting additional Contract Time.

3.05 *Reuse of Documents*

- A. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under the Contract Documents, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of the such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Contractor shall not copyright any material and products or patent any invention developed under this agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Contractor at any time.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; UTILITIES; REFERENCE POINTS; CONTAMINATED MATERIALS AT SITE

4.01 *Availability of Lands*

- A. Except as otherwise stipulated in these General Conditions, Supplementary Conditions, or Specifications, or as shown in the plans, the Department will furnish all the real property necessary for the proper completion of the work at no expense to the Contractor.

Department shall not be obligated to provide real property or office space for the performance of any activities which normally fall within the area of home office activities.

Should Department-furnished areas for obtaining borrow material, contain limerock material, do not remove such material from the pit unless the Engineer gives specific approval.

- B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at Contractor's sole expense.

4.02 *Differing Site Conditions*

- A. This matter is discussed in Paragraph 10.01 G.

4.03 *Utilities*

- A. Not Shown or Indicated:

- 1. If an Utility Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required PP by Paragraph 6.15), identify the owner of such Utility Facility and give written notice to Engineer. Engineer will promptly review the Utility Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Utility.

- B. Changes Affecting Utilities are discussed in Paragraph 10.01 H.

- C. Utilities are further addressed in the Supplementary Conditions Section 1.

4.04 *Reference Points*

- A. Except as otherwise stated in the Supplementary Conditions, the Department shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of

Department. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.05 *Contaminated Materials at Site*

- A. When the construction operations encounter or expose any abnormal condition that may indicate the presence of a contaminated material, discontinue such operations in the vicinity of the abnormal condition and notify the Engineer immediately. Be alert for the presence of tanks or barrels; discolored or stained earth, metal, wood, ground water; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any contaminated materials into uncontaminated areas.

Do not resume the construction operations in the vicinity of the abnormal conditions until so directed by the Engineer.

Dispose of the contaminated material in accordance with the requirements and regulations of any Local, State, or Federal agency having jurisdiction. Where the Contractor performs work necessary to dispose of contaminated material, and the Contract does not include pay items for disposal, the Department will pay for this work as provided in Paragraph 10.02.

- B. The Department may agree to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters contaminated materials or pollutants during the performance of services for the Department when the presence of such materials or pollutants were unknown or not reasonably discoverable. Such indemnification agreements are only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem.

Such indemnification agreements are not valid for damages resulting from the Contractor's willful, wanton, or intentional conduct or the operations of Contaminated and Hazardous Material Contractors.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and other Bonds*

- A. *General Requirements of the Bond:* The Contractor shall, within 10 days after execution of the Agreement by the Department, furnish to the Department, and maintain in effect throughout the life of the Contract, an acceptable surety bond in a sum at least equal to the amount of the Contract. Execute such bond on the form furnished by the Department. Obtain a surety that has a resident agent in the State of Florida, meets all of the requirements of the laws of Florida and the regulations of the Department, and has the Department's approval. Ensure that the surety's

resident agent's name, address, and telephone number is clearly stated on the face of the Contract Bond. All bonds signed by an agent or attorney-in-fact must be accompanied by an affidavit on the form furnished by the Department and a Power of Attorney of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond

- B. *Continued Acceptability of Surety*: The Contractor shall provide a surety bond that remains acceptable to the Department throughout the life of the Contract. In the event that the surety executing the bond, although acceptable to the Department at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after the Department's initial approval of the company, then the Department may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company that is reliable and acceptable to the Department. In such an event, the Department will bear all costs of the premium for the new bond, after deducting any amounts that are returned to the Contractor from his payment of premium on the original bond.
- C. *Default by Contractor*: In case of default on the part of the Contractor, the Department will charge against the bond all expenses for services incidental to ascertaining and collecting losses under the bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.
- D. *Surety to Furnish Legal Defense*: The surety company shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which amount shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.
- E. *Liability for Wrongful or Criminal Act by Contractor*: The principal and surety executing the bond shall be liable to the State in any civil action that might be instituted by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, his agent or his employees.

5.02 *Certificates of Insurance*

- A. Contractor shall deliver to Department, at the time it delivers the Agreement executed by it to the Department, certificates of insurance (and other evidence of insurance requested by Department or any other additional insured) which Contractor is required to purchase and maintain.
- B. Failure of Department to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Department to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. Department does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Department in the Contract Documents.

5.03 Contractor's Insurance

- A. Contractor shall purchase and maintain insurance as is appropriate for the Work being performed, which will as a minimum be as follows:

1. Workers' compensation insurance: Provide workers' compensation insurance in accordance with the laws of the state of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation law for all employees. If subletting any of the work, ensure that the employees of the subcontractors are covered by similar insurance. Ensure that any equipment rental agreements that include operators who are employees of independent Contractors, sole proprietorships or partners are covered by similar insurance. The Engineer will accept equivalent approved protection in lieu of insurance.
2. Contractors' Public Liability and Property Damages Liability Insurance: Furnish evidence to the Department that, with respect to the operations performed, regular Contractors' Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and Regular Contractors' Property Damage Liability insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Cause the Department, and National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, to be each an additional insured party on the Contractor's Protective Public Liability and Public Liability and Property Damages Liability insurance policies that insure the Contractor for the described work that it performs under the Contract.

3. Contractors' Protective Public Liability and Property Damage Liability insurance: Furnish evidence to the Department that, with respect to the operations performed by subcontractors, regular Contractors' Protective Public Liability insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular contractors' protective property damage liability insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Cause the Department, and National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and

City of Orlando, to be each an additional insured party on the Contractor's Protective Public Liability and Property Damage Liability insurance policies that insure the Contractor for the described work that it performs under the contract.

4. Insurance Required for Construction at Railroads:

- (A) General: In addition to any other forms of insurance or bonds required under the terms of the Contract, when the Contract includes the construction of a railroad grade crossing, overpass, or underpass structure, or a railroad crossing signal installation, or any other work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, provide insurance of the types set forth below and in amounts not less than specified herein.
- (B) Railroads' Protective Public Liability and Property Damage Liability Insurance: Furnish the Department with an original insurance policy that, with respect to the operations performed, will provide for and in behalf of the railroad company regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy.

CSX Transportation, Inc. and the Department are to be each a Named Insured on the policy. National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, are to be each an additional insured on the policy.

5. Insurance for Protection of Utility Owners: When the work under the Contract involves work on or in the vicinity of utility-owned property or facilities, furnish the Department with evidence that, with respect to the operations performed, General Comprehensive Liability insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence is carried. The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. Do not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.

The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, are to be each an additional insured on the policy. Do not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.

6. Insurance by Others: Require every subcontractor or other third party who may have a contract with Contractor and who may require access on or to State Property or the Corridor or the Sun Rail Corridor or the FCEN Corridor to obtain and maintain for the duration of such access an insurance policy or policies with coverage that satisfies the conditions stated

in Paragraphs 5.03 A.1., A.2., A.3., A.4., and A.5., including causing each of the Named Insureds and the additional insureds stated in those paragraphs to be Named Insureds and additional insureds on such subcontractor and third party policy or policies.

For purposes of this subparagraph 5.03 A.6. the following apply: "State Property" has the meaning stated in the "TRANSITION AGREEMENT Between State of Florida Department of Transportation and CSX Transportation, Inc.," Appendix A, at page A-4; and "Corridor" has the meaning stated in the "INTERLOCAL OPERATING AGREEMENT FOR OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM By and Between FLORIDA DEPARTMENT OF TRANSPORTATION AND CENTRAL FLORIDA COMMUTER RAIL COMMISSION," Appendix A, at page A-3; and Sun Rail "Corridor" has the meaning stated in the "AGREEMENT BETWEEN NATIONAL RAILROAD PASSENGER CORPORATION AND THE FLORIDA DEPARTMENT OF TRANSPORTATION," Definitions, at page 6; and "FCEN Corridor" has the meaning stated in the "OPERATING AGREEMENT Between State of Florida Department of Transportation, an agency of the State of Florida, and Florida Central Railroad Company, Inc., a Florida Corporation," Definitions, at page 6. Those agreement definitions mentioned above, and as heretofore amended, are incorporated by reference and may be accessed at www.sunrail.com. At that website click on "Updates & Documents," and then click on "Contract Documents" except regarding the Interlocal Operating Agreement click on "Local Agreements."

- B. Submission and Approval of Policies; Termination: Furnish two copies of each required policy to the engineer at the preconstruction conference.

Provide all insurance policies in such form and with insurers that are acceptable to the department, and to the railroad company or the utility owner. Keep insurance in behalf of a railroad company in force until the Department accepts that the Contractor has satisfactorily completed all work required under the contract. Keep insurance in behalf of a utility owner in force, in the full amount specified herein, until 30 days after the Department accepts the work.

- C. The policies of insurance required by this Paragraph 5.03 shall:

1. With respect to insurance required by Paragraphs 5.03 A.2. through 5.03 A.6. inclusive, be written on an occurrence basis.
2. Property Insurance

With respect to the liability insurance for property damages required by Paragraphs 5.03 A. 2. through 5.03 A. 6., inclusive, unless otherwise provided in the Supplementary Conditions, this insurance shall allow for partial utilization of the Work by Department;

5.04 Waiver of Rights

- A. Department and Contractor intend that all policies purchased in accordance with Paragraph 5.03 will protect Department, Contractor, Subcontractors, and all other additional insureds or named insureds in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect

that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds or named insureds thereunder.

5.05 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.03 will be adjusted with Department and made payable to the party who otherwise bears the risk under the Contract Documents.
- B. Except as may be otherwise specifically indicated in the Contracts Documents as to specific items, the risk of loss for the site, the construction, all materials, and equipment installed or be installed as part of the Work and all other property, real or personal, located on the site, shall at all times until final acceptance remain with the Contractor, and Contractor shall have the obligation, at its sole cost and expense, to repair and/or replace any and all such property damaged or destroyed during this time regardless of whether the loss is covered by insurance or not.

5.06 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Department finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.10, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.03 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. *Prosecution of Work:* Contractor shall give the work the constant attention necessary to ensure the scheduled progress, and cooperate fully with the Engineer and with other contractors at work in the vicinity.
- B. *Contractor’s Superintendent:* Contractor shall maintain a competent superintendent at the site at all times while work is in progress to act as the Contractor’s agent. Provide a superintendent who is a competent superintendent capable of properly interpreting the Contract Documents and is thoroughly experienced in the type of work being performed. Provide a superintendent with the full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. Furnish such superintendence regardless of the amount of work sublet.

Provide a superintendent who speaks and understands English, and maintain at least one other responsible person who speaks and understands English, on the project during all working hours.

- C. *Supervision for Emergencies:* Contractor shall provide a responsible person, who speaks and understands English, and who is available at or reasonably near the worksite on a 24 hour basis, seven days a week. Designate this person as the point of contact for emergencies and in cases that require immediate action to maintain traffic or to resolve any other problem that might arise. Submit, by certified mail, the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the project location, to the Florida Highway Patrol and all other local law enforcement agencies.

6.02 Labor

A. *Qualifications of Contractor's Personnel.*

1. Contractor shall: Provide competent, careful, and reliable superintendents, foremen, and workmen. Provide workmen with sufficient skill and experience to properly perform the work assigned to them. Provide workmen engaged on special work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Provide workmen that shall make due and proper effort to execute the work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.
2. It is prohibited as a conflict of interest for a Contractor to subcontract with a Consultant to perform Contractor Quality Control when the Consultant is under contract with Department to perform work on any project described in the Contractor's Contract with the Department. Prior to approving a Consultant for Contractor Quality Control, the Contractor shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists.
3. Whenever the Engineer determines that any person employed by the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate, the Engineer will provide written notice and the Contractor shall discharge the person from the work. Do not employ any discharged person on the project without the written consent of the Engineer. If the Contractor fails to remove such person or persons, the Engineer may withhold all payments that are or may become due, or suspend the work until the Contractor complies with such orders. Protect, defend, indemnify, and hold the Department, its agents, officials, and employees harmless from all claims, actions, or suite arising from such removal, discharge, or suspension of employees.

6.03 Services, Equipment, and Materials

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work. Contractor, in the presence of Engineer, will direct the checkout of utilities and operations of systems and equipment.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Department. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. Materials, including acceptance, applicable documented authorities, storage, defective materials, and contaminated materials, are further addressed in Supplementary Conditions Section 1, paragraph 2.

6.04 *Subletting or Assigning of Contracts; Equipment Rental Agreements*

A. *Subletting or Assigning of Contracts.*

1. Contractor shall not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Request to Sublet Work form provided by the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with his own organization work amounting to not less than 40% of the total Contract amount. The Request to Sublet Work will be deemed acceptable by the Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Request to Sublet Work that the Department is not consenting to the requested subletting.

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

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

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

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

B. *Work Performed by Equipment-Rental Agreement.*

The limitations set forth in Paragraph 6.04 A. concerning the amount of work that may be sublet, do not apply to work performed by equipment-rental agreement. However, for any work proposed to be performed by equipment-rental agreement, notify the Engineer in writing of such intention before using the rented equipment, and indicate whether the equipment will be rented on an operated or non-operated basis. Include with the written notice a listing and description of the equipment and a description of the particular work to be performed with such equipment. As an exception to the above requirements, the Department will not require written notice for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

The operators of all rented equipment, whether rented on an operated or a non-operated basis, are subject to all wage rate requirements applicable to the project. When renting equipment without operators, the Contractor shall carry the operators on his own payroll. For equipment that is rented on an operated basis, and when required by the Contract or requested by the Engineer, furnish payrolls from the lessor with the names of the operators shown thereon.

When a lessor provides rentals of equipment on an operated basis that exceed \$10,000, such lessor is subject to any Equal Employment Opportunity requirements that are applicable to the project.

6.05 *Patented Devices, Materials and Processes*

- A. Contractor shall include all royalties and costs arising from patents, trademarks, and copyrights, in any way involved in the work in the Contract price. Whenever using any design, device, material, or process covered by letters patent or copyright, obtain the right for such use by suitable legal agreement with the patentee or Department of the copyright. File a copy of such agreement with the Engineer. However, whether or not such agreement is made or filed as noted, the Contractor and the surety in all cases shall indemnify, defend, and save harmless, the Department from all claims for infringement by reason of the use of any such patented design, device, material, or process on work under the Contract, and shall indemnify the Department for all costs, expenses, and damages that it may be obliged to pay by reason of any such infringement, at any time during the prosecution or after the completion of the work.

6.06 *Permits and Licenses*

- A. *General:* Except for permits procured by the Department, if any, procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

The Department will also acquire any modifications or revisions to an original permit procured by the Department, if any, when the Contractor requires such modifications or revisions to complete the construction operations specified in the plans or other Contract Documents and within the site limits.

Acquire all permits for work performed outside the site for the project.

In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general,

special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and other Contract Documents, the more stringent condition shall prevail.

All Permits procured by the Department are posted on the Department's website at the following URL address:

<ftp.dot.state.fl.us/permitsandutilityworkschedules/>. Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Comply with the provisions contained in these permits.

If the Department's web site cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850)-414-4101.

The Supplementary Conditions Section 1 paragraph 3., "Permits and Licensing," contains additional provisions regarding permits.

6.07 *Legal Requirements and Responsibility to the Public*

A. *Laws to be Observed.*

1. *General:* Contractor shall become familiar with and comply with all Federal, State, county, and city laws, by-laws, ordinances, and regulations that control the action or operation of those engaged or employed in the work or that affect materials used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 17-5 of the Rules and Regulations, pertaining to open burning in land clearing operations. Where work or structures included in the Contract are in "Navigable Waters of the U.S.," (reference 33 of the Code of Federal Regulations, Part 329); "Waters of the U.S.," (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or "Waters of the State," (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, of the Florida Statutes regarding land reclamation. Direct special attention to Chapters 62c-36 and 62c-39 of the Florida Administrative Code. Submit the Notice of Intent to Mine to:

Department of Environmental Protection
Collins Building

2051 East Dirac Drive
Tallahassee, Florida 32310-3760

with a copy to the Engineer. The Engineer will determine consistency with the environmental documents prior to commencement of mining.

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, of the Florida Statutes, regardless of exemptions allowed by Section 489.103, prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

Prior to building construction or renovation, provide copies of current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Chapter 489, for the appropriate category of construction.

Corporations must be registered with the State of Florida, Department of State, Division of Corporations, and hold a current State Corporate Charter Number in accordance with Chapter 607, Florida Statutes.

The Contractor or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, order, or decrees; whether by himself or his employees.

The Contractor shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES) Stormwater Pollution Prevention Plan and Sediment and Erosion Control Plan for the work.

The Contractor shall exert every reasonable and diligent effort to ensure that all labor employed by the Contractor and his subcontractors for work on the project work harmoniously and compatibly with all labor used by other building and construction contractors now or hereafter on the site of the work covered by this Contract. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others. However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

The Executive Order 11246 Electronic version, dated September 24, 1965 is posted on the Department's website at the following URL address: www.dot.state.fl.us/specificationsoffice/federal/deo11246.pdf. Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

If the Department's website cannot be accessed, contact the Department's Specifications

2. *Plant Quarantine Regulations:* The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule 5B 44, Florida Administrative Code, and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the construction period.

These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of materials containing plant pests across quarantine lines.

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service
U.S. Department of Agriculture
3029 Lake Alfred Road
Winter Haven, Florida 33881

Director, Division of Plant Industry
Florida Department of Agriculture and Consumer Services
Post Office Box 147100
Gainesville, Florida 32614-7100

3. *Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds:* Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 16C-52 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

Furnish the Engineer, prior to incorporation into the project, with a certification from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stating that the sod, hay, straw, and mulch materials are free of noxious weeds, including Tropical Soda Apple.

4. *Compliance with Federal Endangered Species Act and other Wildlife Regulations:* The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact.

When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed on the plans or in permits as identified in Paragraph 6.06A.

In addition, in cases where certain protected, threatened or endangered species may unexpectedly be found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project

These guidelines are posted at the following URL address: www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/endangeredwildlifeguidelines.pdf.

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

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

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

5. *Occupational Safety and Health Requirements:* The Contractor shall take all precautions necessary for the protection of life, health, and general occupational welfare of all persons, including employees of both the Contractor and the Department, until the Contractor has completed the work required under the Contract as provided in Paragraphs 14.11 and 14.13.

Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including 29 CFR 1926, including all subsequent revisions and updates.

6. *Discovery of an Unmarked Human Burial:* When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. Do not resume activity until specifically authorized by the Engineer.

7. *Insecticides and Herbicides*: Use products found on the following website, www.flpesticide.us/ , approved by the Florida Department of Agriculture for the State of Florida. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work.

Ensure that all employees applying insecticides and herbicides possess a current Florida Department of Agriculture Commercial Applicator license with the categories of licensure in Right of Way Pest Control and Aquatic Pest Control. Provide a copy of current certificates upon request, to the Engineer.

Ensure that employees who work with herbicides comply with all applicable Federal, State, and local regulations.

Comply with all regulations and permits issued by any regulatory agency within whose jurisdiction work is being performed. Post all permit placards in a protected, conspicuous location at the work site.

Acquire any permits required for work performed on the rights-of-way within the jurisdiction of National Forests in Florida. Contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office for the proper permits and subsequent approval.

Acquire all permits required for aquatic plant control as outlined in Chapter 62C 20, Florida Administrative Code, Rules of the Florida Department of Environmental Protection. Contact the Regional Field Office of Bureau of Invasive Plant Management of the Florida Department of Environmental Protection for proper permits and subsequent approval. If application of synthetic organo auxin herbicides is necessary, meet the requirements of Chapter 5E 2, Florida Administrative Code.

8. *Compliance with Section 4(f) of the USDOT Act*: Section 4(f) of the USDOT Act prohibits the U. S. Secretary of Transportation from approving a project which requires the use of publicly owned land of a public park, recreation area or a wildlife and waterfowl refuge, or of any historic site of national, state, or local significance unless there is no prudent or feasible alternative to using that land and the program or project includes all possible planning to minimize the harm to the site resulting from the use.

Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources Survey discussed in Specification 120 6.2). If such a site is proposed, notify the Engineer and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county or city map showing the site location and including the access route and the name of the property. It is the Contractor's responsibility to provide justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Provide this notification sufficiently in advance of planned commencement of

the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

9. *Florida Minority Business Loan Mobilization Program:*

The Loan Mobilization Program is established by Section 288.706 of the Florida Statutes, and has as its goal to assist minority business enterprises by facilitating working capital loans to those eligible businesses that are Contractors or subcontractors on Department contracts.

The limits of such advances under this program shall be as specified in Section 288.706 of the Florida Statutes. In the case of a subcontractor, the amount of the advance will be based on the subcontract unit prices, not the contract unit prices.

All prime Contractor vendors shall be required to incorporate the designated loan mobilization payment procedures in subcontract agreements with minority business enterprise vendors participating in this program and to cooperate in the release of designated loan mobilization payments to achieve the objective of providing working capital for minority business enterprise subcontract vendors.

When the Contract has been awarded or, in the case of a subcontractor, a subcontract has been signed with the prime Contractor, application for participation in this program will be made in writing to the Engineer. Such application must be made prior to commencement of the work. If the application is made on behalf of a subcontractor, it shall be considered incomplete if not accompanied by a copy of the subcontract with the unit prices of the work clearly delineated.

When all applicable conditions have been met, approval for participation will be made by the Office of the Comptroller and the applicant will be notified of the approval action taken.

Once approval has been obtained and the Notice to Proceed has been issued, disbursement of the monies will be made at the request of the applicant. The designated loan mobilization payment may be paid prior to the commencement of work on the Contract. However, if the work on the Contract has not commenced and the payment has not been made, then the Contract Time may not commence until the payment is made. All designated loan mobilization payments will be made payable jointly to the prime Contractor and the participating financial institution. When a subcontractor is the participant in the program, such payments shall be paid to the participant within 10 business days after receipt of the funds from the Department.

Repayment of monies advanced through this program will be made after the value of the work accomplished by the participant reaches 50 percent. Contractors are encouraged to make weekly or bi-weekly payments to subcontractors participating in this program.

B. *Sanitary Provisions.*

The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of his employees as are necessary to comply with the

requirements and regulations of the State and local boards of health. Commit no public nuisance.

C. *Forest Protection.*

1. *Compliance with State and Federal Regulations:* In carrying out work within or adjacent to State or National forests or parks, comply with all of the regulations of the State or Federal authority having jurisdiction, governing the protection of and the carrying out of work in forests or parks, and observe all sanitary laws and regulations with respect to the performance of work in these areas. Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction, installation, and maintenance of any construction camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the forest or park official.
2. *Prevention and Suppression of Forest Fires:* Take all reasonable precautions to prevent and suppress forest fires. Require employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress forest fires. Assist in preventing and suppressing forest fires, and make every possible effort to notify a forest official at the earliest possible moment of the location and extent of all fires. Extinguish the fire if practicable.

D. *Wage Rates for Federal-Aid Projects.*

For this Contract, payment of predetermined minimum wages applies.

The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) FL129, FL137, FL140, FL328, FL336, and FL 339, as modified up through ten days prior to the opening of bids.

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

For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department's Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with Proposal Requirements and Conditions for examination of contract documents.

Contact the Department's Wage Rate Coordinator at (850) 414-4492 if the Department's website cannot be accessed or there are questions.

E. *Source of Forest Products.*

As required by Section 255.20 of the Florida Statutes, where price and quality are equal, and when available, use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida. This provision does not apply to Federal-aid projects.

F. *Dredging and Filling.*

Section 370.033 of the Florida Statutes, requires that all persons, who engage in certain dredge or fill activities in the State of Florida, obtain a certificate of registration from the Florida Department of Environmental Protection, Tallahassee, Florida 32301, and that they keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection.

G. *Available Funds.*

For Contracts in excess of \$25,000 or a term for more than one year, comply with the following provisions of Chapter 339 of the Florida Statutes:

The Department will not, during any fiscal year, expend money, incur any liability, or enter into any Contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If the Department enters into such a Contract, verbal or written, in violation of this subsection, such Contract is null and void, and the Department will not make any payments thereon. The Department will require a statement from the Department's comptroller that funds are available prior to entering into any such Contract or other binding commitment of funds. Nothing herein contained prevents the Department from executing Contracts for a period exceeding one year, but the Department will make such Contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. The Department will incorporate this paragraph verbatim in all Contracts in excess of \$25,000 or having a term for more than one year.

H. *Contractor's Motor Vehicle Registration.*

The Contractor shall provide the Department with proof that all motor vehicles operated or caused to be operated by such Contractor are registered in compliance with Chapter 320 of the Florida Statutes. Submit such proof of registration in the form of a notarized affidavit to the Department.

The Department will not make payment to the Contractor until the required proof of registration is on file with the Department.

If the Contractor fails to register any motor vehicle that he operates in Florida, pursuant to Chapter 320 of the Florida Statutes, the Department may disqualify the Contractor from bidding, or the Department may suspend and revoke the Contractor's certificates of *qualification*.

I. *E-Verify.*

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

J. *Scrutinized Companies.*

For Contracts \$1,000,000 and greater, if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

6.08 *Disadvantaged Business Enterprise Program*

A. *Disadvantaged Business Enterprise Program*

1. *Disadvantaged Business Enterprise Affirmative Action Plan:* Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.
2. *Required Contract and Subcontract DBE Assurance Language:* In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate."
3. *Plan Requirements: Include the following in the DBE Affirmative Action Program Plan:*
 - a. A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor's organization.
 - b. The designation of a Liaison Officer within the Contractor's organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.
 - c. Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

- (1) Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.
 - (2) Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.
 - (3) Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.
 - (4) Encouraging eligible DBEs to apply for certification with the Department.
 - (5) Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.
4. *DBE Records and Reports*: Submit the Anticipated DBE Participation Statement at or before the Pre-Construction Conference. Report monthly, through the Equal Opportunity Reporting System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers. The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:
- a. The procedures adopted to comply with these Specifications;
 - b. The number of subordinated Contracts on Department projects awarded to DBEs;
 - c. The dollar value of the Contracts awarded to DBEs;
 - d. The percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;
 - e. A description of the general categories of Contracts awarded to DBEs; and
 - f. The specific efforts employed to identify and award Contracts to DBEs.

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

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

5. *Counting DBE Participation and Commercially Useful Functions*: 49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. On the Anticipated DBE Participation Statement only include the dollars that a DBE is expected to earn for work they perform with their own workforce and

equipment. Submit a revised Anticipated DBE Participation Statement to reflect changes to the initial Anticipated DBE Participation Statement within 14 business days from the date of the change.

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

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

- i. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.
6. *Prompt Payments:* Meet the requirements of Paragraph 14.05 for payments to all DBE subcontractors.

6.09 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.10 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to those lands and other areas permitted by Department, and shall not unreasonably encumber the Site with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Department, and its officers, employees, and consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Department, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

1. The Ownership and disposal of existing Materials, and ornamental trees and shrubs, found on the right-of-way, is further addressed in Supplementary Conditions Section 1 paragraph 4.

C. Cleaning:

1. Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Department.
2. Upon completion of the work, and before the Department accepts the work and makes final payment, remove from the Site and adjacent property all falsework, equipment, surplus and discarded materials, rubbish and temporary structures; restore in an acceptable manner all

property, both public and private, that has been damaged during the prosecution of the work; and leave the waterways unobstructed and the roadway in a neat and presentable condition throughout the entire length of the work under Contract. Do not dispose of materials of any character, rubbish or equipment, on abutting property, with or without the consent of the property owner. The Engineer will allow the Contractor to temporarily store equipment, surplus materials, usable forms, etc., on a well-kept site owned or leased by the Contractor, adjacent to the project. However, do not place or store discarded equipment, materials, or rubbish on such a site.

Shape and dress areas adjacent to the project right-of-way that were used as plant sites, materials storage areas or equipment yards when they are no longer needed for such purposes. Restore these areas in accordance with the Supplementary Conditions Section 1 paragraph 5. N. 1. and 2. regarding Preservation of Property (General, and Failure to Restore Damaged Property). Grass these areas when the Engineer directs.

- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of the Agreement, General Conditions, Supplementary Conditions, Plans, Specifications, Supplemental Agreements, Amendments, Contingency Work Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings, along with a complete as-built Plans of the Construction in reproducible form, will be delivered to Engineer for the Department.

6.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. All persons on the Site or who may be affected by the Work;
 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. See the

Supplementary Conditions Section 1, Paragraph 5. N. and N. 6. regarding Preservation of Property, Utilities.

- C. Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good, without additional expense to the Department, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damage, the Department may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

6.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Department, is obligated to act in a non-negligent manner to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice of all emergencies.

6.16 *Plans and Shop Drawings and Sample*

- A. *Department's Plans:* Plans consist of general drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated. In general, roadway plans will show alignment, profile grades, typical cross-sections and general cross-sections. In general, structure plans will show in detail all dimensions of the work contemplated. When the structure plans do not show the dimensions in detail, they will show general features and such details as are necessary to give a comprehensive idea of the structure.

Grades shown are finished grades, and B.M. Datum is North American Vertical Datum 1988 (NAVD 1988) National Geodetic Vertical Datum of 1929 (NGVD 1929) or other datum as noted in the plans.

- B. *Alterations in Plans:* The Department will issue, in writing, all authorized alterations affecting the requirements and information given on the approved plans.
- C. *Shop Drawings:*

1. *Definitions:*

- a. Shop Drawings: All working, shop and erection drawings, associated trade literature, calculations, schedules, manuals and similar documents submitted by the Contractor to define some portion of the project work. The type of work includes both permanent and temporary works as appropriate to the project.
- b. Permanent Works: All the permanent structures and parts thereof required of the completed Contract.
- c. Temporary Works: Any temporary construction work necessary for the construction of the permanent works. This includes but is not limited to bracing, falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, and special erection equipment.
- d. Construction Affecting Public Safety: Construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels of navigable waterways and walls or other structure foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.
- e. Special Erection Equipment includes launching gantries, beam and winch equipment, form travelers, stability towers, strong-backs, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction equipment such as cranes.
- f. Falsework includes any temporary construction work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations, and any proprietary equipment including modular shoring frames, post shores, and adjustable horizontal shoring.
- g. Formwork includes any structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets. Formwork may be either permanent formwork requiring a shop drawing submittal such as stay-in-place metal or concrete forms, or may be temporary formwork which requires certification by the Specialty Engineer for Construction Affecting Public Safety.
- h. Scaffolding is an elevated work platform used to support workmen, materials and equipment, but not intended to support the structure.
- i. Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this Section, this term is interchangeable with falsework.
- j. Bracing is a temporary structural member(s) placed between beams, girders, piles columns, etc. to provide stability during construction activities.

- k. Contractor Originated Designs: Items which the Contract Documents require the Contractor to design, detail and incorporate into the permanent works.
2. *Work Items Requiring Shop Drawings:* In general, the Department requires shop drawings for items of work not fully detailed in the plans which require additional drawings and coordination prior to constructing the item, including but not limited to:
- a. Retaining Wall Systems
 - b. Precast Box Culverts
 - c. Non-standard lighting, signalization and signing structures and components
 - d. Building structures
 - e. Drainage structures, attenuators, and other nonstructural items
 - f. Design and structural details furnished by the Contractor in compliance with the Contract
 - g. Temporary Works affecting public safety

Other provisions of the Contract Documents may waive the requirement for submittals for certain items; i.e., items constructed from standard drawings or those complying with alternate details. Review the Contract Documents to determine the submittals required.

3. *Schedule of Submittals:* Contractor shall prepare and submit a schedule of submittals that identifies the work for which shop drawings apply. For each planned submittal, define the type, and approximate number of drawings or other documents that are included and the planned submittal date, considering the processing requirements herein. Submit the schedule of submittals to the Department's Shop Drawing Review Office and the Engineer of Record within 60 days of the effective date of the Agreement, and prior to the submission of any shop drawings.

Contractor shall coordinate subsequent submittals with construction schedules to allow sufficient time for review, approval, and re-submittal as necessary.

4. *Style, Numbering, and Material of Submittals:*

- a. Drawings: Contractor will furnish two clearly legible photographic or xerographic copies of all shop drawings that are necessary to complete the structure in compliance with the design shown on the plans. Prepare all shop drawings using the same units of measure as those used in the Department's plans. Use sheets no larger than 11 by 17 inches. Consecutively number each sheet in the submittal series, and indicate the total number in the series (i.e., 1 of 12, 2 of 12, . . . , 12 of 12). Include on each sheet the following items as a minimum requirement: the complete Financial Project Identification Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the project, the Contractor's approval stamp with date and initials, and, when applicable, the documents shall be signed and sealed by the Specialty Engineer or

Contractor's Engineer of Record, as appropriate. A re-submittal will be requested when any of the required information is not included.

- b. Other Documents: Contractor will provide four sets of original documents or clearly legible photographic or xerographic copies of documents other than drawings, such as trade literature, catalogue information, calculations, and manuals. Provide sheets no larger than 11 by 17 inches. Clearly label and number each sheet in the submittal to indicate the total number of sheets in the series (i.e., 1 of 12, 2 of 12, . . . , 12 of 12). Provide an additional three sets of documentation for items involved with precast prestressed components. Provide an additional two sets of documentation for items involving structural steel components.

Contractor will prepare all documents using the same units of measure as those used in the Department's plans. Bind and submit all documents with a Table of Contents cover sheet. List on the cover sheet the total number of pages and appendices, and include the complete Financial Project Identification Number, a title referencing the submittal item(s), the name of the firm and person(s) responsible for the preparation of the document, the Contractor's approval stamp with date and initials, and, when applicable, the documents shall be signed and sealed by the Specialty Engineer or Contractor's Engineer of Record, as appropriate.

Contractor will submit appropriately prepared and checked calculations and manuals that clearly outline the design criteria. Include on the internal sheets the complete Financial Project Identification Number and the initials of the person(s) responsible for preparing and checking the document.

Contractor will clearly label trade literature and catalogue information on the front cover with the title, Financial Project Identification Number, date and name of the firm and person(s) responsible for that document.

5. *Submittal Paths and Copies:*

- a. General: Shop drawings are not required for prequalified items. For non-prequalified items, Contractor will determine the submittal path to be followed based upon the identity of the Engineer of Record as shown adjacent to the title block on the structural plan sheets, and on the key sheets of roadway plans, signing, and pavement marking plans, and/or lighting plans. At the preconstruction conference, the Department will notify the Contractor of any changes in the submittal path and whether the Department's or the Consultant's red-ink review stamp will signify an officially reviewed shop drawing.

- (1) When the Florida Department of Transportation is the Engineer of Record, Contractor will submit shop drawings to the appropriate Department Shop Drawing Review Office with a copy of the letter of transmittal sent to the Resident Engineer. For work requiring other information (e.g., catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating procedures), submit the required number of copies to the appropriate Department Shop Drawing Review Office. If not shown on the plans, the Department will furnish the mailing address of the appropriate Department – Shop Drawing Review Office. Provide copies of material certifications and material tests to the Resident Engineer.

- (2) When the Engineer of Record is a consultant hired by the Department, Contractor will submit shop drawings to the consultant with a copy of the letter of transmittal sent to the Resident Engineer and, when requested, to the appropriate Department Shop Drawing Review Office. For work requiring other documentation (e.g., catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating manuals), submit the required number of copies with the prints. If not shown on the plans, the Department will furnish the mailing address of the Consulting Engineer of Record. Provide copies of material certifications and material tests to the Resident Engineer.
- b. Building Structures: Contractor will submit working, shop and erection drawings, and all correspondence related to building structures, such as Office Buildings, and Maintenance Warehouses, to the Engineer of Record for review and approval. Send a copy of the transmittal to the Resident Engineer.
 - c. Contractor-Originated Design: Contractor will submit shop drawings and applicable calculations to the Engineer of Record for review. Ensure that each sheet of the shop drawings and the cover sheet of the calculations are signed and sealed by the Specialty Engineer or the Contractor's Engineer of Record. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of Paragraphs 6.16 C.5.a. through c., as appropriate.
 - d. Temporary Works: For Construction Affecting Public Safety, Contractor will submit to the Engineer of Record shop drawings and the applicable calculations for the design of special erection equipment, bracing, falsework, scaffolding, etc. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of Paragraphs 6.16 C.5.a. through c., as appropriate.
 - e. Formwork and Scaffolding: The Contractor is solely responsible for the safe installation and use of all formwork and scaffolding. The Department does not require any formwork or scaffolding submittals unless such work would be classified as Construction Affecting Public Safety.
 - f. Beam and Girder Temporary Bracing: The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction. At a minimum, provide temporary bracing at each end of each beam or girder. Develop the required bracing designs in accordance with the AASHTO LRFD Bridge Design Specifications (LRFD) using wind loads specified in the Structures Design Guidelines (SDG). For information not included in the SDG or LRFD, refer to the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works.

For Construction Affecting Public Safety, when temporary bracing requirements are shown in the plans, submit plans and calculations signed and sealed by a Specialty Engineer for the design of temporary bracing members and connections based on the

forces shown in the plans. In addition, submit a written certification that construction loads do not exceed the assumed loads shown in the plans.

For Construction Affecting Public Safety, when temporary bracing requirements are not shown in the plans or an alternate temporary bracing system is proposed, submit plans and calculations signed and sealed by a Specialty Engineer including the stability analysis and design of temporary bracing members and connections.

- g. Erection Plan: Contractor will submit, for Engineer's review, an Erection Plan that meets the specific requirements of the Specifications Division 3, Sections 03450 and 03460, and Division 5, Sections 05120, 05300, and 05525, and the requirements of this section. Refer to Index 600 for construction activities not permitted over traffic.
- h. Other Miscellaneous Design and Structural Details Furnished by the Contractor in Compliance with the Contract: Submit to the Engineer of Record shop drawings and the applicable calculations. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of Paragraphs 6.16 C.5.a. through c., as appropriate.

6. *Processing of Shop Drawings:*

- a. Contractor Responsibility for Accuracy and Coordination of Shop Drawings: Coordinate, schedule, and control all submittals, with a regard for the required priority, including those of the various subcontractors, suppliers, and engineers, to provide for an orderly and balanced distribution of the work.

Coordinate, review, date, stamp, approve and sign all shop drawings prepared by the Contractor or agents (subcontractor, fabricator, supplier, etc.) prior to submitting them to the Engineer of Record for review. Submittal of the drawings confirms verification of the work requirements, units of measurement, field measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers, and other similar data. Indicate on each series of drawings the specification section and page or drawing number of the Contract plans to which the submission applies. Indicate on the shop drawings all deviations from the Contract drawings and itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, clearly state so in the transmittal letter.

Schedule the submission of shop drawings to allow for a 45 day review period. The review period commences upon the Engineer of Record's receipt of the valid submittal or valid re-submittal and terminates upon the transmittal of the submittal back to the Contractor. A valid submittal includes all the minimum requirements outlined in Paragraph 6.16 C.4.

Submit shop drawings to facilitate expeditious review. The Contractor is discouraged from transmitting voluminous submittals of shop drawings at one time. For submittals transmitted in this manner, allow for the additional review time that may result.

Only shop drawings distributed with the “red ink” stamps are valid and all work that the Contractor performs in advance of approval will be at the Contractor’s risk.

- b. *Scope of Review by Engineer:* The Engineer of Record’s review of the shop drawings is for conformity to the requirements of the Contract Documents and to the intent of the design. The Engineer of Record’s review of shop drawings which include means, methods, techniques, sequences, and construction procedures are limited to the effects on the permanent works. The Engineer of Record’s review of submittals which include means, methods, techniques, sequences, and construction procedures does not include an in-depth check for the ability to perform the work in a safe or efficient manner. Review by the Engineer of Record does not relieve the Contractor of responsibility for dimensional accuracy to ensure field fit and for conformity of the various components and details.
 - c. *Special Review by Engineer of Shop Drawings for Construction Affecting Public Safety:* For Construction Affecting Public Safety, the Engineer of Record, or other Engineer as the Department appoints for this purpose, will make an independent review of all relevant shop drawings and similar documents. Contractor shall not proceed with construction of the permanent works until receiving the Engineer of Record’s approval. The review of these shop drawings is for overall structural adequacy of the item to support the imposed loads and does not include a check for economy, efficiency or ease of construction
7. *Modifications for Construction:* Where the Engineer allows the Contractor to make modifications to the permanent works for the purposes of expediting the Contractor’s chosen construction methods, the Contractor shall submit proposals to the Engineer of Record for review and approval prior to modifying the works. Contractor will submit proposals for minor modifications under the shop drawing process. Indicate on all drawings the deviations from the Contract Documents and itemize all deviations in the letter of transmittal.

Minor modifications are those items that, in the opinion of the Engineer, do not significantly affect the quantity of measured work, or the integrity or maintainability of the structure or its components. (For example, adjusting concrete dimensions, substituting steel plate sizes, changing reinforcing bar size and spacing, etc., all within the acceptable limits of the design.)

Major modifications are any modifications that, in the opinion of the Engineer, significantly affect the quantity of measured work, or the integrity or maintainability of the structure or its’ components. (For example, substituting alternative beam sizes and spacings, changing material strength or type, and the like.). Provide signed and sealed revised sheets to the Engineer for any such revisions to the Contract plans prior to submitting shop drawings.

The Engineer’s decision on the delineation between a minor and a major modification and the disposition of a proposal is final.

8. *Cost of Shop Drawings:* Contractor will include the cost of furnishing shop and working drawings in the Contract prices for the work requiring the shop and working drawings. The Department will not pay the Contractor additional compensation for such drawings.

D. *Certifications:*

1. *Special Erection Equipment:* Prior to its use, ensure that the Specialty Engineer personally inspects the special erection equipment and certifies to the Engineer in writing that the equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, ensure that the Specialty Engineer observes the equipment in use and certifies to the Engineer in writing that it is being used as intended and in accordance with the submitted drawings and calculations. In each case, ensure that the Specialty Engineer also signs and seals the letter of certification.
2. *Falsework and Shoring Requiring Shop Drawings:* After its erection or installation but prior to the application of any superimposed load, ensure that the Specialty Engineer personally inspects the falsework and certifies to the Engineer in writing that the falsework has been constructed in accordance with the materials and details shown on the submitted drawings and calculations. Ensure that the Specialty Engineer also signs and seals the letter of certification.
3. *Temporary Formwork:* For Construction Affecting Public Safety, prior to the placement of any concrete, ensure that the Specialty Engineer inspects the formwork and certifies to the Engineer in writing that the formwork has been constructed to safely withstand the superimposed loads to which it will be subjected. Ensure that the Specialty Engineer signs and seals the letter of certification.
4. *Erection:* For Construction Affecting Public Safety, Contractor will submit an erection plan signed and sealed by the Specialty Engineer to the Engineer at least four (4) weeks prior to erection commencing. Include as part of this submittal signed and sealed calculations and details for any falsework, bracing or other connection(s) supporting the structural elements shown in the erection plan.

At least two (2) weeks prior to beginning erection, Contractor will conduct a Pre-erection meeting with the Specialty Engineer and Engineer to review details of the plan.

After erection of the elements but prior to opening of the roadway below the structure, Contractor will ensure that a Specialty Engineer has personally inspected the erected member(s) and certified to the Engineer that the structure has been erected in accordance with the signed and sealed erection plan.

Contractor will perform daily inspections of the erected structural systems. For structures without temporary supports but with temporary girder bracing systems, perform inspections until all the diaphragms and cross frames are in place. For structures with temporary supports, perform inspections until the temporary supports are no longer needed as indicated in the erection plans. Provide written documentation of the inspections to the Engineer within 24 hours of the inspection.

- E. *Corrections for Construction Errors:* For work that the Contractor constructs incorrectly or does not meet the requirements of the Contract Documents, the Contractor has the prerogative to submit an acceptance proposal to the Engineer for review and disposition. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address

structural integrity, aesthetics, maintainability, and the effect on Contract Time. The Department will judge any such proposal for its effect on these criteria and also for its effect on Contract Administration.

When the Engineer judges that a proposal infringes on the structural integrity or maintainability of the structure, the Contractor's Engineer of Record will perform a technical assessment and submit it to the Engineer for approval. Contractor shall not take any corrective action without the Engineer's approval.

Carry out all approved corrective construction measures at no expense to the Department.

Notwithstanding any disposition of the compensation aspects of the defective work, the Engineer's decision on the technical merits of a proposal is final.

6.17 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Contract Schedule during all disputes or disagreements with Department. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as specifically directed in writing by the Department. Contractor's request for temporary suspension of Work is addressed at Paragraph 15.01 A.3.

6.18 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Department that all Work will be in accordance with the Contract Documents and will not be defective. Department shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. Normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Department of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Department;
 - 4. Use or occupancy of the Work or any part thereof by Department;
 - 5. Any acceptance by Department or failure to do so;

6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
7. Any inspection, test, or approval by others; or
8. Any correction of defective Work by Department.

6.19 *Responsibility for Damages, Claims, etc.*

- A. *Contractor to Provide Indemnification:* The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction Contract.

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

- B. *Guaranty of Payment for Claims:* The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

6.20 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

ARTICLE 7 – OTHER WORK OR COORDINATION AT THE SITE

7.01 *Other Work at Site; Utility Work; Work within Railroad Right-of-Way*

- A. Department may perform other work related to the Project at the Site and not included as part of the Work under the Contract Documents at the Site by Department's own forces or through other direct contracts therefor.
- B. Contractor shall afford all persons performing such other work proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that

Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Utilities

- A. Contractor shall also comply with "Utilities" as set forth in Supplementary Conditions Section 1, Paragraph 5. N and N.6, Preservation of Property, Utilities.

7.03 Railroad

- A. Contractor shall also comply with "Operations Within Railroad Right-of-Way," as set forth in the Supplementary Conditions Section 1, Paragraph 5 N. and N.5, Preservation of Property, Operations with Railroad Right-of-Way.

ARTICLE 8 – DEPARTMENT'S RESPONSIBILITIES

8.01 General

- A. Department shall do the following:
 - 1. Designate in writing a person to act as Department's Representative with respect to the services to be rendered under this Agreement.
 - 2. Make payments to Contractor as provided in Article 14.
 - 3. Furnish real property for the Construction as set forth in Paragraph 4.01.
 - 4. Review submittals subject to Department review pursuant to these General Conditions, Supplementary Conditions, or Specifications.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Department's Representative

- A. Engineer is the Department's Director, Office of Construction, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.
- B. Authority of the Engineer. Perform all work to the satisfaction of the Engineer. The Director, Office of Construction will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment

of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

9.02 *Project Representative*

- A. Authority and Duties of Engineers' Assistants. Engineer may appoint such assistants and representatives as he desires. These assistants and representatives are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of these General Conditions, Supplementary Conditions, or the Specifications. Rather, they are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents, and have authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately notify the Contractor in writing of any such suspension of the work, stating in detail the reasons for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

9.03 *Authorized Alterations or Changes in Work*

- A. General: The Engineer reserves the right to make, at any time prior to or during the progress of the work, alterations or changes, as set forth further in these Contract Documents.

9.04 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be not in conformity with these Contract Documents.
- B. Conformity of Work with Contract Documents.

Contractor will perform all work and furnish all materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, as specified in the Contract Documents.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, but that the Contractor has produced reasonably acceptable work, the Engineer will determine if the Department will accept the work in place. In this event, the Engineer will document the basis of acceptance by Contract modification, which provides for an appropriate reduction in the Contract price for such work or materials included in the accepted work as deemed necessary to conform to the determination based on engineering judgment.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, and that the Contractor has produced an inferior or unsatisfactory product, the Contractor shall remove and replace or otherwise correct the work or materials at no expense to the Department.

For base and surface courses, the Department will allow the finished grade to vary as much as 0.1 foot from the grade shown in the plans, provided that the Contractor's work meets all templates and straightedge requirements and contains suitable transitions.

9.05 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Contractor shall perform all work to the satisfaction of the Engineer. The Director, Office of Construction will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

ARTICLE 10 – CHANGES IN THE WORK

10.01 *Changes in the Work*

A. *Alternation of Plans or of Character of Work*

General: The Engineer reserves the right to make, at any time prior to or during the progress of the work, alterations or changes, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such alterations or changes shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered or changed, the same as if it had been a part of the original Contract.

The term "significant change" applies only when the Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction. The allowance due to the Contractor will be in accordance with Paragraph 10.01B below.

In the instance of an alleged "significant change", the determination by the Engineer shall be conclusive and shall not be subject to challenge by the Contractor in any forum, except upon the Contractor establishing by clear and convincing proof that the determination by the Engineer was without any reasonable and good faith basis.

- B. *Increase, Decrease or Alteration in the Work:* The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in Paragraph 11.02 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely provided a

notice of intent to claim or preliminary time extension request pursuant to Paragraph 11.02 and Paragraph 12.03 B, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in Paragraph 11.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under Paragraph 11.06 B.1.

1. *Allowable Costs for Extra Work:* The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:
 - a. *Labor and Burden:* The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

<u>Table 10.01 B. 1.</u>	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

At the Pre-construction conference, certify to the Engineer the following:

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- (2) Actual Rate for items listed in Table 10.01 B. 1.
- (3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- (4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

- b. *Materials and Supplies*: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.
- c. *Equipment*: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

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

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

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

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

- d. *Indirect Costs, Expenses, and Profit*: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether

jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (1) or (2) below:

(1) Solely a mark-up of 17.5% on the payments in a. through c., above.

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

(ii) The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

(2) Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively

totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days granted for performing additional work.

2. *Subcontracted Work*: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in Paragraph 10.01 B.1. a., b., c. and d.(1), with the exception of, in the instance of subcontractor performed work only, the subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

The Contractor shall require the subcontractor to provide a certification, in accordance with Paragraph 10.01 B 1. a., as part of the cost proposal and provide such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

- C. *No Waiver of Contract*: Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.
- D. *Conditions Requiring a Supplemental Agreement or Unilateral Payment*: A Supplemental Agreement or Unilateral Payment will be used to clarify the plans and specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.
- E. *Extra Work*: Extra work authorized in writing by the Engineer will be paid in accordance with the formula in Paragraph 10.01 B. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in Paragraph 10.01 B for additional work.
- F. *Connections to Existing Pavement, Drives and Walks*: Generally adhere to the limits of construction at the beginning and end of the project as detailed in the plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated on the plans, the Engineer will provide direction regarding the proper connections in accordance with the Design Standards.

- G. *Differing Site Conditions*: During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has provided the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

- H. *Changes Affecting Utilities*: The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, joint project agreements or utility relocation schedules.

10.02 Unforeseeable Work.

- A. When the Department requires work that is not covered by a price in the Contract and such work does not constitute a "Significant Change" as defined in Paragraph 10.01 A. and the Department finds that such work is essential to the satisfactory completion of the Contract within its intended scope, the Department will make an adjustment to the Contract. Such adjustment will be made by Work Order when the Contract Documents provide for Contingency Work. When the Contract Documents do not provide for Contingency Work or the available funds for Contingency Work are insufficient, such adjustment will be made by Supplemental Agreement. The cost of unforeseeable work will be a negotiated amount or, in lieu of negotiations or other

agreement, an amount based on material invoices, equipment costs, labor payrolls, and markups provided in Paragraph 10.01 B.

Contingency Work, as used in this Article 10, is defined as possible additional work required to satisfactorily complete the Contract within its intended scope.

10.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as set forth in these General Conditions and Supplementary Conditions.

10.04 *Execution of Supplemental Agreements and Claims.*

- A. The Contract price constitutes the total compensation (subject to adjustments as specifically permitted by the Contract Documents) payable to Contractor for performing the Work.
- B. The Contract Price may only be changed by a Supplemental Agreement.
- C. When Contractor deems that extra compensation is due beyond that agreed to by the Engineer the Contractor shall follow the procedures set forth in Article 11 for the preservation, presentation and resolution of the claim.

10.05 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 11 – CLAIMS BY CONTRACTOR

11.01 *General*

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

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

complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

11.02 Notice of Claim:

- A. *Claims For Extra Work:* Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to Paragraph 10.01, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to Paragraph 12.03 B. within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to Paragraph 12.03 B. within thirty calendar days after the elimination of the delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with Paragraph 14.13, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with Paragraph 14.13, the Contractor shall submit full and complete claim documentation as described in Paragraph 11.03 and duly certified pursuant to Paragraph 11.09.

If the Contractor fails to submit a certificate of claim as described in Paragraph 11.09, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in Paragraph 11.09, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

- B. *Claims For Delay:* Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to Paragraph 10.01, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to Paragraph 12.03 B. within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to Paragraph 12.03 B. within thirty calendar days after the elimination of the delay. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with Paragraph 14.13, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final

acceptance of the project in accordance with Paragraph 14.13, the Contractor shall submit full and complete documentation as described in Paragraph 11.03 and duly certified pursuant to Paragraph 11.09.

If the Contractor fails to submit a certificate of claim as described in Paragraph 11.09, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in Paragraph 11.09, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under Paragraph 10.01 or Article 11, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in Paragraph 10.01 B. 1.a. and c., and then only to the extent the Contractor could not reasonably mitigate such idleness.

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

- A. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
- B. The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
- C. Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
- D. Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
- E. A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
 - 1. Documented additional job site labor expenses;
 - 2. Documented additional cost of materials and supplies;
 - 3. A list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;

4. Any other additional direct costs or damages and the documents in support thereof;
 5. Any additional indirect costs or damages and all documentation in support thereof.
- F. A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

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

11.04 *Action on Claim*

- A. The Engineer will respond on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with Paragraph 11.03, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with Paragraph 11.03. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with Paragraph 11.03 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per Paragraph 14.13 of all Contract work by the Department or denial hereunder, whichever occurs last.

11.05 *Pre-Settlement and Pre-Judgment Interest*

- A. Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with Paragraph 11.03, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with Paragraph 11.03, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with Paragraph 11.03 and ending on the date of final settlement or formal ruling.

11.06 Compensation for Extra Work or Delay:

- A. *Compensation for Extra Work:* Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in Paragraph 10.01 B.
- B. *Compensation for Delay:* Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in Paragraph 11.06 B. 1. below shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, supplemental agreements, work orders, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to Paragraph 15.01 A.1 and 2., shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.
 - 1. *Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay:* For any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in Paragraph 10.01 B.1.d. and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

11.07 Mandatory Claim Records

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

11.08 *Claims For Acceleration*

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

11.09 *Certificate of Claim*

- A. When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

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

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

11.11 *Exclusive Remedies*

- A. Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under Article 11. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in Article 11.

11.12 *Settlement Discussions*

- A. The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the

Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

11.13 *Personal Liability of Public Officials*

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

11.14 *Auditing of Claims:*

- A. All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim.
- B. Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request for copies provide copies at the Department's expense, any or all of the following documents:
 - 1. Daily time sheets and foreman's daily reports and diaries;
 - 2. Insurance, welfare and benefits records;
 - 3. Payroll register;
 - 4. Earnings records;
 - 5. Payroll tax return;
 - 6. Material invoices, purchase orders, and all material and supply acquisition contracts;

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

ARTICLE 12 – CHANGE OF CONTRACT TIME, COMPUTATION OF CONTRACT TIME

12.01 *Change in Contract Time*

- A. The Contract Time (or Milestones) may only be changed by a Supplemental Agreement, a Contingency Work Order, or a letter from the Engineer granting additional Contract Time.
- B. When Contractor deems that a time extension is due beyond that agreed to by the Engineer the Contractor shall follow the procedures set forth in Article 11 for the preservation, presentation and resolution of the claim.

12.02 *Computation of Contract Time.*

- A. *General*: Perform the contracted work fully, entirely, and in accordance with the Contract Documents within the Contract Time specified in the Agreement, or as may be extended in accordance with the provisions herein below.

The Department considers in the computation of the allowable Contract Time the effect that utility relocation and adjustments have on job progress and the scheduling of construction operations required in order to adequately maintain traffic, as detailed in the plans or as scheduled in the Special Provisions.

- B. *Date of Beginning of Contract Time*: The date on which Contract Time begins is stated in Paragraph 2.06.

12.03 *Adjusting Contract Time*

- A. *Increased Work*: The Department may grant an extension of Contract Time when it increases the Contract amount due to adding new work or providing for unforeseen work. The Department will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the additional designated work delays the Contract completion schedule.

- B. *Contract Time Extensions*:

- 1. The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in Paragraph 15.01 A., for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations due to holidays as defined in Paragraph 15.01 A.5. in establishing Contract Time. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations due to holidays that prevent the Contractor from productively performing controlling items of work resulting in:

- (1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions, holiday suspension; or
- (2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather.

The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the affect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

- (1) Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.
 - (2) Utility work actually affected progress toward completion of controlling work items.
 - (3) The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.
2. As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

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

Furthermore, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted Contract Schedule, including any required update(s), as stated in Paragraphs 2.08 and 2.09, is a condition precedent to the Contractor having any right to the granting of an extension of contract time or any monetary compensation arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the Department's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the Department's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

ARTICLE 13 – GENERAL INSPECTION REQUIREMENTS; STOPPING WORK; REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *General Inspection Requirements*

- A. *Cooperation by Contractor:* Contractor shall not perform work or furnish materials without obtaining inspection by the Engineer or his representative. Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents.

If the Engineer so requests at any time before final acceptance of the work, Contractor will remove or uncover such portions of the finished work as directed. After examination, Contractor will restore the uncovered portions of the work to the standard required by the Contract Documents.

If the Engineer determines that the work so exposed or examined is unacceptable, Contractor will perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Department.

However, if the Engineer determines that the work thus exposed or examined is acceptable, the Department will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed in accordance with Paragraph 10.02.

- B. *Failure of Engineer to Reject Work During Construction:* If, during or prior to construction operations, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Department to final acceptance. The Department is not responsible for losses suffered due to any necessary removals or repairs of such defects.
- C. *Contractor's Failure to Remove and Renew Defective Materials and Work:* If the Contractor fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the Contractor's expense. The Department will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Contractor fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.
- D. *Inspection by Federal Government:* When the United States Government pays a portion of the cost of construction, its representatives may inspect the construction work as they deem necessary. However, such inspection will in no way make the Federal Government a party to the Contract.

13.02 *Department May Stop the Work*

- A. This matter is discussed in Article 15.

13.03 *Correction or Removal of Defective Work*

- A. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Department's special warranty and guarantee, if any, on said Work.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraphs 2.08 and 2.09 will serve as the basis for progress payments and will be incorporated into an Invoice or Bill using a form provided by the Department. Except for materials and equipment not incorporated in the Construction but delivered and suitably stored at the Site or another location agreed to in writing, in order to be entitled to submit an Invoice or Bill for any component, unit or division of the Work to which the Schedule of Values has assigned a portion of the Contract Price, all Work associated with that component, unit or division must be finally completed in accordance with the Contract Documents and all inspections, tests, approvals, and corrections of defective Construction applicable to that component, unit or division must be finally completed.

14.02 *Invoice or Bill Requirements*

A. *Submittals.*

1. *Submittal Instructions:* The Contractor will prepare a progress invoice. Submit the progress invoice to the Engineer. The Engineer will not pay for any item of work until the progress invoice is approved.
2. *Contractor's Invoice:* The Contractor must make a request for payment by submitting an invoice, no later than 12 O'clock noon, on the first Monday of the month except if that Monday is a state Holiday then on the next calendar day which is not a state Holiday, or as directed by the Engineer, based on the amount of work done or completed. The Contractor's invoice must be in detail sufficient for a preaudit and postaudit thereof and must consist at a minimum of the following and all other information required by the form provided by the Department:
 - a. Contract Number, Financial Project Identification Number, Invoice Number, Invoice Date and the period that the invoice represents.
 - b. The basis for arriving at the amount of the progress invoice including approximate quantities of work completed, less payments previously made and less an amount previously retained or withheld.
 - c. Contract Summary showing the percentage of dollar value of completed work based on the present Contract amount and the percentage of days used based on the present Contract Days.

3. *Payment to the Contractor:* Upon receipt of the progress invoice and approval by the Engineer, payment will be made, less an amount retained or withheld per provisions included in the Contract. The monthly payments will be subject to reduction for overpayments or increase for underpayments on preceding payments to the Contractor and to correction in the subsequent monthly payments and the final payment.
- B. Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following: Contractors providing goods and services to an agency should be aware of the following time frames: Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.
- If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes will be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the Bureau of Accounting at (850) 413-5516.
- C. The bills for any travel expenses, when otherwise specifically authorized by the Agreement or the Contract Documents, shall be submitted in accordance with Section 12.061, Florida Statutes.
- D. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of project costs.

14.03 Scope of Payments

- A. *Items Included in Payment:* Contractor shall accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or

from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its final acceptance; also for all other costs incurred under the provisions of these General Conditions and Supplementary Conditions.

The Contract Price shall include all overhead, profits, and direct and indirect costs required to complete the project except as described in the Supplementary Conditions Section 1, paragraph 6, Item 1 C., Determination of Pay Reduction.

14.04 Deleted Work

- A. The Department will have the right to cancel the portions of the Contract relating to the construction of any acceptable item therein, by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date that the Engineer cancels the work.

14.05 Progress (Partial) Payments

- A. *General:* The Engineer will make partial payments monthly based on the Schedule of Values, less any retainage withheld.

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

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

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

The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

- B. *Unsatisfactory Payment Record:* In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory. The Department may also disqualify the surety from issuing bonds for future Department contracts if they similarly fail to perform under the terms of their bond.
- C. *Withholding Payment:*
 - 1. *Withholding Payment for Defective Work:* If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

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

- (a) comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, and Affirmative Action;
- (b) comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;
- (c) comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and

The Department will withhold progress payments until the Contractor has satisfied the above conditions.

D. *Release of Retainage After Acceptance:* When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, reports, materials certifications, certification of materials procured, etc., (excluding Contractor's Affidavit and Surety Consent Release – Form 21) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in Paragraph 14.05 C.

The Department may deduct from payments any sums that the Contractor owes to the Department on any account.

E. *Partial Payments for Delivery of Certain Materials:*

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

The following conditions apply to all payments for stockpiled materials:

- a. There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
- b. The stockpiled material must be approved as meeting applicable specifications.
- c. The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
- d. The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.

- e. Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
 - f. Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.
2. *Partial Payment Amounts:* The following partial payment restrictions apply:
- a. Partial payments less than \$5,000 for any one month will not be processed.
 - b. Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Department requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.
3. *Off Site Storage:* If the conditions of Paragraph 14.05 E.1. are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of Paragraph 14.05E.1. and the following conditions are met:
- a. Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.
 - b. The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials:
 - “Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement.”
 - “Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor’s obligation to furnish the materials described in this agreement to the Florida Department of Transportation.”
 - c. The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.
- F. *Certification of Payment to Subcontractors:* The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the

subcontractor's work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor's work. Provide this certification in the form designated by the Department.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period.

14.06 *Record of Construction Materials*

- A. *General*: For all construction materials used in the construction of the project, (except materials exempted by Paragraph 14.06 B., preserve for the Department's inspection the invoices and records of the materials for a period of three years from the date of completion of the project. Apply this requirement when subcontractors purchase materials, and obtain the invoices and other materials records from the subcontractors. By providing the materials, the Contractor certifies that all invoices will be maintained for the required period.
- B. *Non-Commercial Materials*: The provisions of Paragraph 14.06 A. do not apply to materials generally classed as non-commercial, such as fill materials, local sand, sand-clay, or local materials used as stabilizer.

14.07 *Disputed Amounts Due the Contractor*

- A. The Department reserves the right to withhold from the final payment any disputed amounts between the Contractor and the Department. The Department will release all other amounts due, as provided in Paragraph 14.13.

14.08 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Invoice or Bill, whether incorporated in the Project or not, will pass to Department no later than the time of payment free and clear of all Liens.

14.09 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Department-in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that the Department issue a certificate of Substantial Completion.

Within a reasonable time after Contractor's notification, Department and Contractor shall make an inspection of the Work to determine the status of completion. If Department does not consider the Work substantially complete, Department will notify Contractor in writing giving the reasons therefor.

If Department considers the Work substantially complete, Department will deliver to Contractor a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment.

At the time of delivery of the certificate of Substantial Completion, Department will deliver to Contractor a written recommendation as to division of responsibilities pending final payment between Department and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees.

- B. Department shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the list of items to be completed.

14.10 *Partial Utilization*

- A. Use by Department at Department's option of any substantially completed part of the Work which (i) has specifically been identified in the Contract Documents, or (ii) which Department and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Department for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:
 - 1. Department at any time may request Contractor in writing to permit Department to use any such part of the Work which Department believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor, shall certify to Department that such part of the Work is substantially complete and request Department issue a certificate of Substantial Construction for that part of the Construction.
 - 2. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.06 regarding property insurance.

14.11 *Final Inspection*

- A. *Maintenance until Acceptance:* Contractor shall maintain all Work until the Engineer has given final acceptance in accordance with Paragraph 14.13, or unless Engineer agrees otherwise as to a substantially completed part of the Work which the Department has accepted in accordance with paragraph 14.11 C.
- B. *Inspection for Acceptance:* Upon notification by Contractor that all Contract Work, or all Contract Work on the portion of the Contract scheduled for acceptance, has been completed, the Engineer will make an inspection for acceptance. The inspection will be made within seven days of the notification. If the Engineer finds that all work has been satisfactorily completed, the Department will consider such inspection as the final inspection. If any or all of the Work is found to be unsatisfactory, the Engineer will detail the remedial work required to achieve acceptance. Immediately perform such remedial work. Subsequent inspections will be made on the remedial work until the Engineer accepts all Work.

Upon satisfactory completion of the Work, the Department will provide written notice of acceptance, either partial or final, to the Contractor.

Until final acceptance in accordance with Paragraph 14.13, replace or repair any damage to the accepted Work. Payment of such work will be as provided in Paragraph 6.12 C.

- C. *Partial Acceptance*: At the Engineer's sole discretion, the Engineer may accept any portion of the Work under the provisions of Paragraph 14.11 B.
- D. *Conditional Acceptance*: The Engineer will not make, or consider requests for conditional acceptance of a project.

14.12 *Final Application for Payment*

- A. After Contractor has completed all such corrections to the satisfaction of Department and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by Paragraphs 5.02 and 5.03, certificates of inspection, documents as provided in Paragraph 6.12, and other documents as may be otherwise required by the Contract Documents, Contractor may make a Invoice or Bill for final payment following the procedure for progress payments and the provisions of Paragraph 14.13. The final Invoice or Bill shall be accompanied (unless previously delivered) by :
 - 1. All documentation called for in the Contract Documents,
 - 2. Consent of the surety, if any, to final payment, and
 - 3. All documents required pursuant to the provisions of Section 337.141 of the Florida Statutes.

14.13 *Final Payment and Final Acceptance*

- A. If Department is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, the Department will within ten days after receipt of the Invoice or Bill provide written notice of final acceptance. The procedures of Section 337.141 Florida Statutes shall apply to final payment.

14.14 *Interest Due on Delayed Final Payments*

- A. Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.

14.15 *Offsetting Payment*

- A. Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is hereby made a part of this Contract:
 - 1. After settlement, arbitration, or final adjudication of any claim of the Department for work done pursuant to a construction contract with any party, the Department may offset such

amount from payments due for work done on any construction contract, excluding amounts owed to subcontractors, suppliers, and laborers, which it has with the party owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department.

2. Offsetting any amount pursuant to 1. above shall not be considered a breach of Contract by the Department.

14.16 *Recovery Rights, Subsequent to Final Payment.*

- A. The Department reserves the right, if it discovers an error in the partial or final payments, or if it discovers that the Contractor performed defective work or used defective materials, after the final payment has been made, to claim and recover from the contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

Retain all records pertaining to the project for a period of three years from the date of the engineer's final acceptance of the project. Upon request, make all such records available to the department or its representative. For the purpose of this article, records include all books of account, supporting documents, and papers that the department deems necessary to ensure compliance with the contract provisions.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Suspension of the Work*

A. *Temporary Suspension of Contractor's Operations*

1. Authority to Suspend Contractor's Operations: The Engineer has the authority to suspend the Contractor's operations, wholly or in part. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department may grant an extension of Contract time in accordance with Paragraph 12.03 B. when determined appropriate in the Department's sole judgment.

No additional compensation or time extension will be paid or granted to the Contractor when the operations are suspended for the following reasons:

- a. The Contractor fails to comply with the Contract Documents.
- b. The Contractor fails to carry out orders given by the Engineer.
- c. The Contractor causes conditions considered unfavorable for continuing the Work.

Immediately comply with any suspension order. Do not resume operations until authorized to do so by the Engineer in writing. Any operations performed by the Contractor, and otherwise constructed in conformance with the provisions of the Contract, after the issuance of the suspension order and prior to the Engineer's authorization to resume operations will be at no cost to the Department. Further, failure to immediately comply with any suspension order

will also constitute an act of default by the Contractor and is deemed sufficient basis in and of itself for the Department to declare the Contractor in default, in accordance with Paragraph 15.02, with the exception that the Contractor will not have ten calendar days to correct the conditions for which the suspension was ordered.

2. **State of Emergency:** The Engineer has the authority to suspend the Contractor's operations, wholly or in part, pursuant to a Governor's Declaration of a State of Emergency. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department, at its sole discretion, may grant an extension of Contract Time and reimburse the Contractor for specific costs associated with such suspension. Further, in such instances, the Department's determination as to entitlement to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.
3. **Prolonged Suspensions:** If the Engineer suspends the Contractor's operations for an indefinite period, store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way. Take every reasonable precaution to prevent damage to or deterioration of the work performed. Provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and provide any temporary structures necessary for public travel through the project.
4. **Permission to Suspend Contractor's Operations:** Contractor shall not suspend operations or remove equipment or materials necessary for completing the work without obtaining the Engineer's written permission. Submit all requests for suspension of operations in writing to the Engineer, and identify specific dates to begin and end the suspension. The Contractor is not entitled to any additional compensation for suspension of operations during such periods.
5. **Suspension Of Contractor's Operations-Holidays:** Unless the Contractor Submits A Written Request To Work On A Holiday At Least Ten Days In Advance Of The Requested Date And Receives Written Approval From The Engineer, The Contractor Shall Not Work On The Following Days: Martin Luther King, Jr. Day; Memorial Day; The Saturday And Sunday Immediately Preceding Memorial Day; Independence Day; Independence Day (Observed); Labor Day; The Friday, Saturday, And Sunday Immediately Preceding Labor Day; Veterans Day; Veterans Day (Observed); Thanksgiving Day; The Friday, Saturday And Sunday Immediately Following Thanksgiving Day; And December 24 Through January 2, Inclusive. Contract Time Will Be Charged During These Holiday Periods Regardless Of Whether Or Not The Contractor's Operations Have Been Suspended. Contract Time Will Be Adjusted In Accordance With Paragraph 12.03 B. The Contractor Is Not Entitled To Any Additional Compensation Beyond Any Allowed Contract Time Adjustment For Suspension Of Operations During Such Holiday Periods.

During Such Suspensions, Remove All Equipment And Materials From The Clear Zone, Except Those Required For The Safety Of The Traveling Public And Retain Sufficient Personnel At The Job Site To Properly Meet The Requirements Of Specifications Sections 102 and 104. The Contractor Is Not Entitled To Any Additional Compensation For Removal Of Equipment From Clear Zones Or For Compliance With Specifications Section 102 And Section 104 During Such Holiday Periods.

15.02 *Termination of Contract for Default*

A. *Determination of Default:* The following acts or omissions constitute acts of default and, except as to subparagraphs 9. and 11., the Department will give notice, in writing, to the Contractor:

1. Fails to begin the work under the Contract within the time specified in the Notice to Proceed;
2. Fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure prompt completion of the Contract;
3. Performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work that the Engineer rejects as unacceptable and unsuitable;
4. Discontinues the prosecution of the work, or fails to resume discontinued work within a reasonable time after the Engineer notifies the Contractor to do so;
5. Becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
6. Allows any final judgment to stand against him unsatisfied for a period of ten calendar days;
7. Makes an assignment for the benefit of creditors;
8. Fails to comply with Contract requirements regarding minimum wage payments or EEO requirements;
9. Fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order; or
10. For any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the Department.
11. Fails to comply with Paragraph 2.04.

For a notice based upon reasons stated in subparagraphs 1 through 8 and 10: if the Contractor, within a period of ten calendar days after receiving the notice described above, fails to correct the conditions of which complaint is made, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

If the Contractor, after having received a prior notice described above for any reason stated in subparagraph 2, 3, 4, 5, 6, or 8, commits a second or subsequent act of default for any reason covered by the same subparagraph 2, 3, 4, 5, 6, or 8 as stated in the prior notice, and regardless whether the specific reason is the same, then, regardless of whether the Contractor has cured the deficiency stated in that prior notice, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without any prior written notice to the Contractor and

without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph 9, if the Contractor fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order, the Department will, upon written certificate from the Engineer of the fact of such delay and the Contractor's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph 11, if the Contractor fails to comply with Paragraph 2.04, the Department will have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

The Department has no liability for anticipated profits for unfinished work on a Contract that the Department has determined to be in default.

Notwithstanding the above, the Department shall have the right to declare the Contractor (or its "affiliate") in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. The Department's right to default the Contractor (or its "affiliate") for "conviction" of a "contract crime" shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its "affiliate") that resulted in the "conviction." In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

- B. *Completion of Work by Department:* Upon declaration of default, the Department will have full power to appropriate or use any or all suitable and acceptable materials and equipment on the site and may enter into an agreement with others to complete the work under the Contract, or may use other methods to complete the work in an acceptable manner. The Department will charge all costs that the Department incurs because of the Contractor's default, including the costs of completing the work under the Contract, against the Contractor. If the Department incurs such costs in an amount that is less than the sum that would have been payable under the Contract had the defaulting Contractor completed the work then the Department will pay the difference to the defaulting Contractor. If the Department incurs such costs in an amount that exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay the State the amount of the excess.

If, after the ten day notice period and prior to any action by the Department to otherwise complete the work under the Contract, the Contractor establishes his intent to prosecute the work in accordance with the Department's requirements, then the Department may allow the Contractor

to resume the work, in which case the Department will deduct from any monies due or that may become due under the Contract, any costs to the Department incurred by the delay, or from any reason attributable to the delay.

15.03 *Termination of Contract for Convenience*

- A. The Department may terminate the entire Contract or any portion thereof, if the Secretary determines that a termination is in the Department's interest. The Secretary will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.

When the Department terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the Department will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and according to the formulas and provisions set forth in Paragraph 10.01 B. for items of work partially completed, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started. The Department will not consider any claim for loss of anticipated profits, or overhead of any kind (including home office and jobsite overhead or other indirect impacts) except as provided in Paragraph 10.01 B. for partially completed work.

The Department will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

The Department may purchase at actual cost acceptable materials and supplies procured for the work, that the Department has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Engineer may designate.

Termination of a contract or a portion thereof, under the provisions of this Subarticle, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the Contract or its obligations for and concerning any just claims arising out of the work performed.

All Contractor claims for additional payment, due to the Department's termination of the entire Contract or any portion thereof, must meet the requirements of Article 11..

15.04 *Liquidated Damages for Failure to Substantially Complete the Work.*

- A. The Contractor shall pay liquidated damages to the Department for any failure of the Contractor to substantially complete the Work within the required Contract Time.
- B. *Amount of Liquidated Damages:* Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount Daily Charge Per Calendar Day

\$50,000 and under.....	\$ 2,289
Over \$50,000 but less than \$250,000.....	\$ 2,344
\$250,000 but less than \$500,000.....	\$ 2,433
\$500,000 but less than \$2,500,000.....	\$ 2,724
\$2,500,000 but less than \$5,000,000.....	\$ 3,107
\$5,000,000 but less than \$10,000,000.....	\$ 3,407
\$10,000,000 but less than \$15,000,000.....	\$ 3,800
\$15,000,000 but less than \$20,000,000.....	\$ 4,041
\$20,000,000 and over.....	\$ 4,992
plus.....	0.000025 of any amount over \$20 million

- C. *Determination of Number of Days of Default:* Regardless of whether the Contract Time is stipulated in calendar days or working days, the Engineer will count default days in calendar days.
- D. *Conditions under which Liquidated Damages are Imposed:* If the Contractor or, in case of his failure to substantially complete the Work within the time stipulated in the Contract, the surety fails to substantially complete the Work within the time stipulated in the Contract, or within such extra time that the Department may have granted, then the Contractor or, in case of his failure to substantially complete the Work within the stipulated Contract time, the surety shall pay to the Department, not as a penalty, but as liquidated damages, the amount so due as provided in Paragraph 15.04B.
- E. *Right of Collection:* The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the Contractor.
- F. *Allowing Contractor to Finish Work:* The Department does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and to finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.
- G. *Completion of Work by Department:* In the case of failure of the Contractor to substantially complete the Contract Work within the time stipulated in the Contract and the completion of the work by the Department, the Contractor and his surety are liable for the liquidated damages under the Contract, but the Department will not charge liquidated damages for any delay in the final completion of the Department's performance of the work due to any unreasonable action or delay on the part of the Department.

15.05 *Release of Contractor's Responsibility.*

- A. The Department considers the Contract complete when the Contractor has completed all work and the Department has accepted the work. The Department will then release the Contractor from further obligation except as set forth in his bond, and except as provided in Paragraph 14.16.

15.06 *Recovery of Damages Suffered by Third Parties.*

- A. In addition to the damages provided for in Paragraph 15.04 B. and pursuant to Section 337.18 of the Florida Statutes, when the Contractor fails to complete the work within the Contract Time or within such additional time that the Department may grant the Department may recover from the Contractor amounts that the Department pays for damages suffered by third parties unless the failure to timely complete the work was caused by the Department's act or omission.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. *Regional Disputes Review Board:* For this Contract, a Regional Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the work on the Contract.
 - 1. *Purpose:* The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and the Contractor in an effort to avoid construction delay and future claims.

It is not intended that the Department or the Contractor default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes or claims without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Requests for equitable adjustment must be certified as required by Paragraph 10.01B. Claims that are referred to the Board must be in compliance with Article 11. It is a condition of this Contract that the parties shall use the Dispute Review Board. The completed DRB hearing of any unresolved disputes or claims is a condition precedent to the Department or the Contractor having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law on such unresolved disputes or claims.

The recommendations of the Board will not be binding on either the Department or the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

2. *Continuance of Work:* During the course of the Disputes Review Board process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the disputes or claims.
3. *Membership:* The Disputes Review Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA), and posted on the Department's Website.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Once established, the Board will remain active and in full force and effect. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Disputes Review Board shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

4. *Procedure and Schedules for Disputes Resolution:* Disputes and claims will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.
 - a. If the Contractor objects to any decision, action or order of the Engineer, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.
 - b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute or claim. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.
 - c. This decision will be final and conclusive on the subject, unless a written appeal to the Engineer is filed by the Contractor within 15 days of receiving the decision. Should the Contractor preserve its protest of the Engineer's decision, the matter can be referred to the Board by either the Department or the Contractor.

- d. Upon receipt by the Board of a written duly preserved protest of a dispute or claim, either from the Department or the Contractor, it will first be decided when to conduct the hearing.
- e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute or claim. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.
- f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may present information at the hearing that was not previously distributed to both the Board and the other party.
- g. The Board's recommendations for resolution of the dispute or claim will be given in writing to both the Department and the Contractor, within 15 days of completion of the hearings. In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. The Board will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. If both parties request, and sufficient documentation is available, the Board may make a recommendation of monetary damages.
- h. Within 15 days of receiving the Board's recommendations, both the Department and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of either party to respond within the 15 day period will be deemed an acceptance of the Board's recommendations by that party. If the Department and the Contractor are able to resolve the dispute or claim with or without the aid of the Board's recommendations, the Department will promptly process any required Contract changes.
- i. Should the dispute or claim remain unresolved, either party may seek reconsideration of the decision by the Board only when there is new evidence to present. No provisions in this Specification will abrogate the Contractor's responsibility for preserving the request for equitable adjustment in accordance with Paragraph 10.01B. or the Contractor's responsibility for preserving a claim filed in accordance with Article 11.

Although both the Department and the Contractor should place great weight on the Board's recommendation, it is not binding. If the Board's recommendations do not resolve the dispute or claim, all records and written recommendations of the Board will be admissible as evidence in any subsequent dispute resolution procedures.

5. *Contractor Responsibility:* The Contractor shall furnish to each Board member a set of all pertinent documents which are or may become necessary for the Board, except documents furnished by Department, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are used in the performance of the work or in justifying or substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Contractor will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

6. *Department Responsibilities:* Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

- a. *Contract Related Documents:* The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.
 - b. *Coordination and Services:* The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.
7. *Limitation for Referral of Disputes or Claims to the Board:* Any disputes or claims that were not resolved prior to Final Acceptance of the project pursuant to Paragraph 14-12 must be referred to the Board within 90 calendar days after Final Acceptance for projects with an original Contract amount of \$3,000,000 or less, and within 180 calendar days after Final Acceptance on projects with an original Contract amount greater than \$3,000,000. Only duly preserved disputes or claims will be eligible to be heard by the Board. Failure to submit all disputes or claims to the Board within aforementioned timeframe after Final Acceptance constitutes an irrevocable waiver of the Contractor's dispute or claim.
 8. *Basis of Payment:* A per hearing cost of \$8,000 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The Board chairman will receive \$3,000 for participation in the hearing while the remaining two members will receive \$2,500 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor \$4,000 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at \$3,300 per day, payment of which is equally split between the Department and the Contractor. Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

- B. *Statewide Disputes Review Board*: For this Contract, a Statewide Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the administration and enforcement of a specification when such specification specifically refers disputes to this Board.

1. *Purpose*: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of the disputes and claims between the Contractor and the Department.

It is not intended that the Department or the Contractor default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes or claims without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Requests for equitable adjustment must be certified as required by Paragraph 10.01 B. Claims that are referred to the Board must be in compliance with Article 11. It is a condition of this Contract that the parties shall use the Statewide Disputes Review Board.

The recommendations of the Board will be binding on both the Department and the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

2. *Membership*: The Statewide Disputes Review Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA), and posted on the Department's Website.

Members on the Board will be pre-qualified as experts of the type of work being referred to this Board.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

After the Department has made final acceptance of the project, if disputes arise, the Statewide Disputes Review Board shall be activated to hear and rule on the disputed issue.

3. *Procedure and Schedules for Disputes Resolution:* Disputes or claims will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.
 - a. If the Contractor objects to any decision, action or order of the Engineer resulting from the Engineer's evaluation of the guaranteed product or performance period, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.
 - b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.
 - c. The Engineer's decision will be final and conclusive on the subject, unless the Contractor files a written appeal to the Engineer within 15 days of receiving the decision. Upon the Engineer's receipt of the Contractor's written appeal containing specific protest of all or part of the Engineer's decision, either the Department or the Contractor can refer the matter to the Board.
 - d. Upon receipt by the Board of a written duly preserved protest of a dispute or claim, either from the Department or the Contractor, it will first be decided when to conduct the hearing.
 - e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute or claim. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.
 - f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may present information at the hearing that was not previously distributed to both the Board and the other party.
 - g. The Board's recommendations for resolution of the dispute or claim will be given in writing to both the Department and the Contractor, within 15 days of completion of the hearings. The Board will focus its attention in the written report to matters of responsibility for repairs of guaranteed work or performance period as provided for by the Contract Documents.
4. *Contractor Responsibility:* The Contractor shall furnish to each Board member a set of all pertinent documents that are or may become necessary for the Board, except documents

furnished by Department, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are used in the performance of the work or in justifying or substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Contractor will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

5. *Department Responsibilities:* Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

- a. *Contract Related Documents:* The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.
 - b. *Coordination and Services:* The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.
6. *Basis of Payment:* A per hearing cost of \$8,000 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The Board chairman will receive \$3,000 for participation in the hearing while the remaining two members will receive \$2,500 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor \$4,000 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at \$3,300 per day, payment of which is equally split between the Department and the Contractor. Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation,

accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed

ARTICLE 17 – MISCELLANEOUS

17.01 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed using calendar days and shall exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a Holiday, such day will be omitted from the computation. Time periods of less than seven days shall be computed on the basis of business, and not calendar days.

17.02 *Cumulative Remedies*

- A. The duties and obligations imposed by these Contract Documents and the rights and remedies available hereunder to the parties hereto, and in particular but without limitation, any general or specific warranties, guarantees and indemnities imposed upon Contractor and all the rights and remedies available to Department thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.03 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work and termination of the services of Contractor or completion of the Agreement.

17.04 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

17.05 *PUR 1000*

- A. Terms and conditions of PUR 1000, as attached hereto, are included in these General Conditions.

**State of Florida
PUR 1000
General Contract Conditions
Central Florida Commuter Rail Transit (CFCRT), Station Finishes**

Contents

1. Definitions.
2. ~~Purchase Orders.~~
3. ~~Product Version.~~
4. ~~Price Changes Applicable only to Term Contracts.~~
5. ~~Additional Quantities.~~
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. ~~Transportation and Delivery.~~
12. ~~Installation.~~
13. ~~Risk of Loss.~~
14. Transaction Fee.
15. ~~Invoiceing and Payment.~~
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. ~~Indemnification.~~
20. ~~Limitation of Liability.~~
21. ~~Suspension of Work.~~
22. ~~Termination for Convenience.~~
23. ~~Termination for Cause.~~
24. ~~Force Majeure, Notice of Delay, and No Damages for Delay.~~
25. ~~Changes.~~
26. ~~Renewal.~~
27. ~~Purchase Order Duration.~~
28. Advertising.
29. ~~Assignment.~~
30. Antitrust Assignment
31. ~~Dispute Resolution.~~
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. ~~Insurance Requirements.~~
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. ~~Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).~~
41. ~~Products Available from the Blind or Other Handicapped.~~
42. ~~Modification of Terms.~~
43. ~~Cooperative Purchasing.~~
44. Waiver.
45. ~~Annual Appropriations.~~
46. Execution in Counterparts.
47. ~~Severability.~~

1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

~~**2. Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.~~

~~**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.~~

~~**4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.~~

~~(a) Quantity Discounts. Contractors are urged to offer additional discounts for one-time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.~~

~~(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.~~

~~(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.~~

~~(d) Trade In.~~ Customers may trade in equipment when making purchases from the Contract. A trade in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

~~(e) Equitable Adjustment.~~ The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

~~5. Additional Quantities.~~ For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

~~11. Transportation and Delivery.~~ Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

~~12. Installation.~~ Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order.

~~Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.~~

~~**13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.~~

14. Transaction Fee. The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms — EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time

~~limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.~~

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dls.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

19. Indemnification. ~~The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.~~

~~Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the~~

~~purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.~~

~~The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.~~

20. Limitation of Liability. ~~For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.~~

~~Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.~~

21. Suspension of Work. ~~The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.~~

22. Termination for Convenience. ~~The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.~~

23. Termination for Cause. ~~The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a~~

subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

26. Renewal. Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

27. Purchase Order Duration. Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the

single delivery/performance, and shall survive the termination of the Contract.

~~Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.~~

~~The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.~~

~~Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.~~

~~Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.~~

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

29. Assignment. ~~The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.~~

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

31. Dispute Resolution. ~~Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.~~

~~Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the~~

~~Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.~~

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

~~**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.~~

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). ~~Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.~~

41. Products Available from the Blind or Other Handicapped. ~~Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.~~

42. Modification of Terms. ~~The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.~~

43. Cooperative Purchasing. ~~Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requester's use of the contract is cost effective and in the best interest of the State.~~

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

45. Annual Appropriations. ~~The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.~~

46. Execution in Counterparts. The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

47. Severability. ~~If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.~~

SUPPLEMENTARY
CONDITIONS

Financial Project No.: 412994-3-52-01

Description:
Central Florida Commuter Rail Transit (CFCRT)
Station Finishes

Note: This document is prepared, in part, from the document, produced by the Engineers Joint Contract Documents Committee, document EJCDC No. C-700 (2007 Edition). It has been modified and is subject to EJCDC copyright protection.

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN DEPARTMENT AND CONTRACTOR (hereinafter referred to as GENERAL CONDITIONS) and other provisions of the AGREEMENT and Contract Documents. All provisions which are not so amended or supplemented remain in full force and effect.

SECTION 1

1. Added to General Conditions, Paragraph 4.04 Reference Points, is the following as it applies to that portion of the Work which is roadway:

B. *Engineering and Layout.*

1. *Control Points Furnished by the Department:* The Engineer will provide centerline control points (Begin Project, End Project, PIs, PTs, etc.) and bench marks at appropriate intervals along the line of the project to facilitate the proper layout of the work. Normally, the Engineer will furnish only one bench mark for water crossings. Contractor will preserve all reference points and bench marks that the Department furnishes.

As an exception to the above, for projects where the plans do not show a centerline or other survey control line for construction of the work (e.g., resurfacing, safety modifications, etc.) the Engineer will provide only points marking the beginning and ending of the project, and all exceptions.

2. *Furnishing of Stake Materials:* Contractor will furnish all stakes, templates, and other materials necessary for establishing and maintaining the lines and grades necessary for control and construction of the work.

3. *Layout of Work:* Utilizing the control points furnished by the Department in accordance with Paragraph B.1 above, Contractor will establish all horizontal and vertical controls necessary to construct the work in conformity to the Contract Documents. Contractor will perform all calculations required, and set all stakes needed such as grade stakes, offset stakes, reference point stakes, slope stakes, and other reference marks or points necessary to provide lines and grades for construction of all roadway, bridge, and miscellaneous items.

When performing utility construction as part of the project, establish all horizontal and vertical controls necessary to carry out such work.

4. *Specific Staking Requirements:* When performing new base construction as part of the project, Contractor will set stakes to establish lines and grades for subgrade, base, curb, and related items at intervals along the line of the work no greater than 50 feet on tangents and 25 feet on curves. Set grade stakes at locations that the Engineer directs to facilitate checking of subgrade, base, and pavement elevations in crossovers, intersections, and irregular shaped areas.

For bridge construction stakes and other control, Contractor will set references at sufficiently frequent intervals to ensure construction of all components of a structure in accordance with the lines and grades shown in the plans.

For projects where the plans do not show a centerline or other survey control line for construction of the work (resurfacing, safety modifications, etc.), Contractor will provide only such stakes as necessary for horizontal and vertical control of work items.

For resurfacing and resurfacing-widening type projects, Contractor will establish horizontal controls adequate to ensure that the asphalt mix added matches with the existing pavement. In tangent sections, set horizontal control points at 100 foot intervals by an instrument survey. In curve sections, set horizontal control points at 25 foot intervals by locating and referencing the centerline of the existing pavement.

Contractor will establish by an instrument survey, and mark on the surface of the finished pavement at 25 foot intervals, the points necessary for striping of the finished roadway. As an exception, for resurfacing and resurfacing/widening projects, establish these points in the same manner as used for horizontal control of paving operations. Mark the pavement with white paint. If performing striping, the Engineer may approve an alternate method for layout of striping provided that the Contractor achieves an alignment equal to or better than the alignment that would be achieved using an instrument survey.

For projects that include temporary or permanent striping of "no passing zones", Contractor will provide the location and length of these zones as shown in the plans, except projects where the vertical or horizontal alignment is new or altered from preconstruction alignment. For projects that consist of new or altered vertical or horizontal alignment, the Department will provide the location and length of the "no passing zones" during construction. For these projects, notify the Engineer not less than 21 calendar days prior to beginning striping.

For all projects, Contractor will set a station identification stake at each right-of-way line at 100 foot intervals and at all locations where a change in right-of-way width occurs. Mark each of these stakes with painted numerals, of a size readable from the roadway, corresponding to the project station at which it is located. As an exception to the above, for projects where plans do not show right-of-way lines, set station identification stakes at locations and intervals appropriate to the type of work being done. For resurfacing and resurfacing/widening projects, set station identification stakes at 200 foot intervals.

5. *Personnel, Equipment, and Record Requirements:* Contractor will employ only competent personnel and use only suitable equipment in performing layout work. Do not engage the services of any person or persons in the employ of the Department for performance of layout work.

Contractor will keep adequate field notes and records while performing as layout work. Make these field notes and records available for the Engineer's review as the work progresses, and furnish copies to the Engineer at the time of completion of the project. The Engineer's inspection, checking, or acceptance of the Contractor's field notes or layout work does not relieve the Contractor of his responsibility to achieve the lines, grades, and dimensions shown in the Contract Documents.

Prior to final acceptance of the project, Contractor will mark in a permanent manner on the surface of the completed work, all horizontal control points originally furnished by the Department.

2. Added to General Conditions, Paragraph 6.03, Service, Equipment and Materials, is the following:

E. Acceptance Criteria.

1. *General:* Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. Contractor will use only materials in the work that meet the requirements of these Contract Documents. The Engineer may inspect and test any material, at points of production, distribution and use.

2. *Sampling and Testing:* Contractor will use the Department's current sample identification and tracking system to provide related information and attach the information to each sample. Restore immediately any site from which material has been removed for sampling purposes to the pre-sampled condition with materials and construction methods used in the initial construction, at no additional cost to the Department.

Contractor will ensure when a material is delivered to the location as described in the Contract Documents, there is enough material delivered to take samples, at no expense to the Department.

a. *Pretest by Manufacturers:* Contractor will submit certified manufacturer's test results to the Engineer for qualification and use on Department projects. Testing will be as specified in the Contract Documents. The Department may require that manufacturers submit samples of materials for independent verification purposes.

b. *Point of Production Test:* Contractor will test the material during production as specified in the Contract Documents.

c. *Point of Distribution Test:* Contractor will test the material at Distribution facilities as specified in the Contract Documents.

d. *Point of Use Test:* Contractor will test the material immediately following placement as specified in the Specifications. After delivery to the project, the Department may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by Producer Certification. The Department may reject all materials that, when retested, do not meet the requirements of these Contract Documents.

3. Certification:

a. *Producer Certification:* Contractor will provide complete certifications for materials as required. Furnish to the Engineer for approval, Producer Certifications for all products listed on the Qualified Products List and when required by the applicable material Specification(s). Do not incorporate any manufactured products or materials into the

project without approval from the Engineer. Materials will not be considered for payment when not accompanied by Producer Certification. Producers may obtain sample certification forms through the Department's website. Ensure that the certification is provided on the producer's letterhead and is signed by a legally responsible person from the producer and notarized.

(1) *Qualified Products List*: The Product Evaluation Section in the State Specifications and Estimates Office publishes and maintains a Qualified Products List. This list provides assurance to Contractors, consultants, designers, and Department personnel that specific products and materials are approved for use on Department facilities. The Department will limit the Contractor's use of products and materials that require pre-approval to items listed on the Qualified Products List effective at the time of placement.

Manufacturers seeking evaluation in accordance with Departmental procedures of an item must submit a Product Evaluation Application, available on the Department's website

www2.dot.state.fl.us/specificationsestimates/productevaluation/qpl/submittalprocess.aspx with supporting documentation as defined and detailed by the applicable Specifications and Standards. This may include certified test reports from an independent test laboratory, certification that the material meets all applicable specifications, signed and sealed drawings and calculations, quality control plans, samples, infrared scans, or other technical data.

Manufacturers successfully completing the Department's evaluation are eligible for inclusion on the Qualified Products List. The Department will consider any marked variations from original test values for a material or any evidence of inadequate field performance of a material as sufficient evidence that the properties of the material have changed, and the Department will remove the material from the Qualified Products List.

(2) *Approved Products List*: The State Traffic Operations Office maintains the Approved Products List of Traffic Control Signal Devices. Traffic Monitoring Site Equipment and Materials are also included on the Approved Products List. This list provides assurance to Maintaining Agencies, Contractors, consultants, designers, and Department personnel that the specific items listed are approved for use on Department facilities. The Department will limit the Contractor's procurement and use of Traffic Control Signal Devices, and Traffic Monitoring Site equipment and materials to only those items listed on the Approved Products List that is effective at the time of procurement, except as provided in Specifications Section 603.

The approval process is described in detail on the State Traffic Operation website, www.dot.state.fl.us/trafficoperations/terl/apl2.htm. Manufacturers seeking evaluation of a specific device must submit an application which can be obtained from the State Traffic Operations Office.

b. *Contractor Installation Certification*: Provide installation certifications as required by the Contract Documents.

c. *Lump Sum Project General Requirements*: Material is accepted by material sampling and testing requirements for the following work activities: Earthwork and Related Operations, Base Courses, Hot Bituminous Mixtures, Portland Cement Concrete, and Reinforcing Steel as stated in Specifications Section 105-2. Fabricated metal acceptance will be in accordance with Specifications Section 105-1.2.3. All other material acceptance will be in accordance with this Paragraph 6.03 E.

d. *Certification on Qualified Products List (QPL) Products*: Submit to the Engineer a notarized manufacturer's certification on each QPL product that will be incorporated in the project. Submit the certification prior to utilization of the material on the project. Each certification will have the manufacturer letterhead, product name, batch number, FPID, Contract Number, category, county, title of certification person and test results in each product listed in the Department Specification. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. This letter will be delivered to the jobsite prior to placement or utilization. Retain test results for a minimum of three years.

e. *Certification on all Other Materials Not Specified*: Submit to the Engineer a notarized manufacturer's certification on each product that will be incorporated in the project. Submit the certification prior to utilization on the project. Each certification will have the manufacturer letterhead, identification and type of material, FPID, Contract Number, county, test results of the material and notarized signature from the manufacturer. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. Retain test results for a minimum of three years.

F. *Applicable Documented Authorities Other Than Specifications.*

1. *General*: Details on individual materials are identified in various material specific Sections of the Specifications that may refer to other documented authorities for requirements. When specified, Contractor will meet the requirements as defined in such references.

2. *Test Methods*: Methods of sampling and testing materials are in accordance with the Florida Methods (FM). If a Florida Method does not exist for a particular test, Contractor will perform the testing in accordance with the method specified in the Specification. When test methods or other standards are referenced in the Specifications without identification of the specific time of issuance, use the most current issuance, including interims or addendums thereto, at the Effective Date of the Agreement.

3. *Construction Aggregates*: Aggregates used by Contractor on Department projects must be in accordance with Rule 14-103, FAC.

G. *Storage of Materials and Samples.*

1. *Method of Storage*: Contractor will store materials in such a manner as to preserve their quality and fitness for the work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific materials are prescribed under the applicable Specifications. The Department may reject improperly stored materials.

2. *Use of Right-of-Way for Storage*: If the Engineer allows, the Contractor may use a portion of the right-of-way for storage purposes and for placing the Contractor's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. When used, Contractor will restore the right of way to pre-construction condition at no additional cost to the Department or as specified in the Contract Documents. Contractor will provide any additional space required at no expense to the Department.

3. *Responsibility for Stored Materials*: Contractor will accept responsibility for the protection of stored materials. The Department is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored materials.

4. *Storage Facilities for Samples*: Contractor will provide facilities for storage of samples as described in the Contract Documents and warranted by the test methods and Specifications.

H. Defective Materials.

Materials not meeting the requirements of the Contract Documents will be considered defective. The Engineer will reject all such materials, whether in place or not. Contractor will remove all rejected material immediately from the site of the work and from storage areas, at no expense to the Department.

Contractor shall not use material that has been rejected and the defects corrected, until the Engineer has approved the material's use. Upon failure to comply promptly with any order of the Engineer made under the provisions of this paragraph, the Engineer has the authority to have the defective material removed and replaced by other forces and deduct the cost of removal and replacement from any moneys due or to become due the Contractor.

As an exception to the above, within 30 calendar days of the termination of the LOT or rejection of the material, the Contractor may submit a proposed scope of work to the Engineer for an engineering or independent laboratory (as approved by the Engineer) analysis to determine the disposition of the material. A Specialty Engineer, who is an independent consultant, or the Contractor's Engineer of Record as stated within each individual Section shall perform any such analysis. Upon the Engineer's approval of the scope of work submitted by the Contractor, the engineering analysis must be completed and the report must be submitted to the Engineer within 45 calendar days, or other time frame as approved by the Engineer. The report must be signed and sealed by the Specialty Engineer. The Engineer will determine the final disposition of the material after review of the information submitted by the Contractor. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review.

I. Products and Source of Supply.

1. *Source of Supply—Convict Labor* (Federal Aid Contracts Only): Contractor shall not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway

construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

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

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

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

2. *Contaminated, Unfit, Hazardous, and Dangerous Materials:* Contractor shall not use any material that, after approval and/or placement, has in any way become unfit for use. Do not use materials containing any substance that has been determined to be hazardous by the State of Florida Department of Environmental Protection or the U.S. Department of Environmental Protection. Provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards, as determined by the U.S. Department of Labor Occupational Safety and Health Administration.

3. Added to General Conditions, Paragraph 6.06, Permits and Licensing, is the following;

- B. *Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State:* In general, one or more governmental agencies will exercise regulatory authority over work or structures, including related construction operations, in all tidal areas (Channelward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and in all tributaries of navigable waters up to their headwaters.

Whenever the work under or incidental to the Contract requires structures or dredge/fill/construction activities in "Navigable Waters of the U.S.," "Waters of the U.S.," and "Waters of the State," the Federal, State, county, and local regulatory agencies may require the Department to obtain a permit. For such dredge/fill /construction specified in the plans to be accomplished within the limits of the project, or for any dredge/fill/construction within the limits of Department-furnished borrow areas, the Department will procure the necessary permits prior to advertising for bids.

The "State of Florida Department of Environmental Protection (DEP) Generic Permit for Stormwater Discharge from Large and Small Construction Activities" applies to this Contract. Contractor will obtain a copy of the permit through the Department's website and comply with the

requirements of the permit. The URL for obtaining a copy of the permit is www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/DEPPermit.pdf.

In accordance with the requirements of the DEP generic permit, accept responsibility for the following:

- (1) Preparation, execution and submission of DEP Generic Permit Notice of Intent (NOI) and payment of associated fee(s)
- (2) Preparation and submission of Erosion Control Plan as outlined in Section 104
- (3) Any Contractor initiated SWPPP modifications
- (4) Performing inspections using a qualified inspector
- (5) Completion of SWPPP construction inspection reports
- (6) Executing associated certification forms provided by the Engineer
- (7) Preparation, execution and submission of Notice of Termination (NOT) of the DEP Generic Permit coverage.

Contractor will use the SWPPP Construction Inspection Form provided by the Engineer to report all inspection findings and to document all corrective actions taken as a result of the inspection. Sign each inspection report and submit it weekly to the Engineer.

C. As-Built Drawings and Certified Surveys

1. *Surface Water Management Systems for Water Management Districts:* As a condition precedent to final acceptance of the project, Contractor will submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions for all installed and constructed surface water management systems. The as-built drawings and certified survey must satisfy all the requirements and special conditions listed in the Water Management District's Environmental Resource Permit (ERP) and any applicable local permit. The as-built drawings and certified survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

If the ERP does not contain specific requirements, Contractor will provide as-built drawings with the following information as a minimum :

- a. Discharge structures: structure identification number, type, locations (latitude and longitude), dimensions and elevations of all, including weirs, bleeders, orifices, gates, pumps, pipes, and oil and grease skimmers.
- b. Side bank and underdrain filters, or exfiltration trenches: locations, dimensions and elevations of all, including clean-outs, pipes, connections to control structures and points of discharge to receiving waters.
- c. Storage areas for treatment and attenuation: storage area identification number, dimensions, elevations, contours or cross-sections of all, sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems.

d. System grading: dimensions, elevations, contours, final grades or cross-sections to determine contributing drainage areas, flow directions and conveyance of runoff to the system discharge points.

e. Conveyance: dimensions, elevations, contours, final grades or cross-sections of systems utilized to divert off-site runoff around or through the new system.

f. Water levels: existing water elevations and the date determined.

g. Benchmarks: location and description (minimum of one per major water control structure).

2. *Bridge Clearances for Projects under the Authority of a U.S. Coast Guard Permit:* As a condition precedent to final acceptance of the project, Contractor will submit to the Engineer a certified survey verifying the as-built clearances described in the U.S. Coast Guard Owner's Certification of Bridge Completion. The certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

3. *Projects Under the Authority of a U.S. Army Corps of Engineers Permit:* As a condition precedent to final acceptance of the project, Contractor will submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions. The as-built drawings and certified survey must satisfy all of the requirements and special conditions listed in the U.S. Army Corps of Engineers permit. The as-built drawings and certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

4. Added to General Conditions, Paragraph 6.10 C. Use of Site and Other Areas, is the following;

C. 1. *Rights in and Use of Materials Found on the Right-of-Way*

a. *Ownership and Disposal of Existing Materials:* Contractor will take ownership and dispose of all materials that are not designated as the property of other parties, in both roadway and structures, found on the right-of-way, and all material in structures designated for removal. Such materials do not include earth or other excavated material required for the construction of the project. During construction, the Contractor may use materials from existing structures that are required to be removed and that are designated to remain the property of the Department. Do not cut or otherwise damage such material during removal unless the Engineer gives permission to do so. Store material in an accessible location as the Engineer directs. The Department is not responsible for the quality or quantity of any material salvaged.

b. *Ornamental Trees and Shrubs:* Contractor will take ownership of all ornamental trees or shrubs existing in the right-of-way that are required to be removed for the construction operations and which are not specifically designated on the plans to be reset, or to be removed by others prior to the construction operations.

5. Added to General Conditions, Paragraph 6.07, Legal Requirements and Responsibility to the Public, is the following:

K. *Restoration of Surfaces Opened by Permit.*

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair work will be paid for by the party holding such permit, the Engineer may authorize the Contractor to allow parties bearing such permits to make openings in the highway. Upon the Engineer's written order, Contractor will perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary work that the Engineer orders, subject to the same conditions as the original work performed. The Department will pay the Contractor for such work either under applicable Contract items or in accordance with General Conditions Paragraph 10.02 when Contract items are not applicable.

L. *Control of the Contractor's Equipment.*

1. *Traffic Interference:* Contractor shall not allow equipment, while it is on or traversing a road or street, to unreasonably interfere with traffic.

2. *Overloaded Equipment:* Contractor shall not operate on any road or street any hauling unit or equipment loaded in excess of (1) the maximum weights specified in the Florida Uniform Traffic Control Law, or (2) lower weights legally established for any section of road or bridge by the Department or local authorities. The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of subparagraph L. 3 below. This restriction applies to all roads and bridges inside and outside the Contract limits as long as these roads and bridges are open for public use. The Contractor may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Contractor is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

3. *Crossings:* Where it is necessary to cross an existing road or street, including specifically the existing traveled lanes of a divided highway within the limits of the project, Contractor will obtain permits from the Department, for crossing overloaded or oversized equipment. Cross existing roads or streets only at Engineer-designated points. The Engineer may require the Contractor to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. Provide flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

4. *Protection from Damage by Tractor-Type Equipment:* Contractor will take positive measures to ensure that tractor-type equipment does not damage the road. If any such damage should occur, repair it without delay, at no expense to the Department and subject to the Engineer's approval.

5. *Posting of the Legal Gross Vehicular Weight:* Contractor will display the maximum legal gross weight, as specified in the Florida Uniform Traffic Code, in a permanent manner on each side of any dump truck or dump type tractor-trailer unit hauling embankment material,

construction aggregates, road base material, or hot bituminous mixture to the project over any public road or street. Display the weight in a location clearly visible to the scale operator, in numbers that contrast in color with the background and that are readily visible and readable from a distance of 50 feet.

M. *Use of Explosives.*

When using explosives for the prosecution of the work, Contractor will exercise the utmost care not to endanger life or property, including new work. The Contractor is responsible for all damage resulting from the use of explosives.

Contractor will store all explosives in a secure manner in compliance with all laws and ordinances, and clearly mark all such storage places with the words: "DANGEROUS - EXPLOSIVES". Place such storage in the care of a competent watchman. Where no local laws or ordinances apply, provide storage satisfactory to the Engineer and, in general, not closer than 1,000 feet from the road or from any building, camping area, or place of human occupancy.

Contractor will notify each public utility company having structures in proximity to the site of the work of the intention to use explosives. Give such notice sufficiently in advance to enable the companies to take precautionary steps to protect their property from injury.

N. *Preservation of Property*

1. *General:* Contractor will preserve from damage all property which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not specified in the plans. This applies to public and private property, public and private utilities (except as modified by the provisions of subparagraph N. 6 below), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor), etc., Whenever the Contractor's activities damage or injure such property, immediately restore it to a condition similar or equal to that existing before such damage occurred, at no expense to the Department.

Contractor will protect existing bridges during the entire construction period from damage caused by the construction operations or equipment. The Department will not require the Contractor to provide routine repairs or maintenance for such structures. However, immediately repair, at no expense to the Department, all damage occasioned by the construction operations. In the event that the Contractor's construction operations result in damage to a bridge requiring repairs, the Contractor shall make such repairs with any equipment, materials, or labor at the Contractor's disposal prior to continuing Contract work.

Contractor will direct special attention to the protection of all geodetic monuments, horizontal or vertical, located within the limits of construction.

2. *Failure to Restore Damaged Property:* In case of failure on the part of the Contractor to restore such property, bridge, road or street, or to make good such damage or injury, the Engineer may, upon 48 hours notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any

monies due or which may become due the Contractor under the Contract. Nothing in this clause prevents the Contractor from receiving proper compensation for the removal, damage, or replacement of any public or private property, not shown on the plans, that is made necessary by alteration of grade or alignment. The Engineer will authorize such work, provided that the Contractor, or his employees or agents, have not, through their own fault, damaged such property.

3. *Contractor's Use of Streets and Roads:*

a. *On Systems Other than the State Highway System:* When Contractor is hauling materials or equipment to the project over roads and bridges on the State park road system, county road system, or city street system, and such use causes damage, immediately, at no expense to the Department, repair such road or bridge to as good a condition as before the hauling began.

The Department may modify the above requirement in accordance with any agreement the Contractor might make with the governmental unit having jurisdiction over a particular road or bridge, provided that the Contractor submits written evidence of such agreement to the Engineer.

b. *On the State Highway System:* The Department is responsible for the repair of any damage that hauling materials to the site causes to roads outside the limits of the project, that are either on the State highway system (roads under the jurisdiction of the Department) or specifically designated in the plans as haul roads from Department-furnished material pits, except in the event damage is due to failure to comply with General Conditions Paragraph 6.07 L.2. (added by paragraph 5 of these Supplementary Conditions). The Contractor is responsible for all damages to any road or bridge caused by the Contractor's failure to comply with General Conditions Paragraph 6.07 L.2. (added by paragraph 5 of these Supplementary Conditions).

c. *Within the Limits of a Construction Project:* The Department will not allow the operation of equipment or hauling units of such weight as to cause damage to previously constructed elements of the project, including but not necessarily limited to bridges, drainage structures, base course, and pavement. Contractor shall not operate hauling units or equipment loaded in excess of the maximum weights specified in General Conditions Paragraph 6.07 L.2. (added by paragraph 5 of these Supplementary Conditions) on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement, and bridges. The Engineer may allow exceptions to these weight restrictions for movement of necessary equipment to and from its worksite, for hauling of offsite fabricated components to be incorporated into the project, and for crossings as specified in General Conditions Paragraph 6.07 L.3 (added by paragraph 5 of these Supplementary Conditions).

4. *Traffic Signs, Signal Equipment, Highway Lighting and Guardrail:* Contractor will protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing

roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

If the Department determines that damage to such existing traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Contractor will repair damage caused by vandalism at no expense to the Department.

Payment for repairs will be in accordance with General Conditions Paragraph 10.02.

5. *Operations Within Railroad Right-of-Way:*

a. Notification to the Railroad Company: Contractor will notify the Engineer at least 72 hours before beginning any operation within the limits of the railroad right-of-way; any operation requiring movement of employees, trucks, or other equipment across the tracks of the railroad company at other than an established public crossing; and any other work that may affect railroad operations or property.

b. Contractor's Responsibilities: Contractor will comply with requirements an authorized representative of the railroad company deems necessary in order to safeguard the railroad's property and operations. Specifically, comply with the Construction Submission Criteria of the CSX Transportation (CSXT) Public Project Information document and Construction Requirements sections of the CSXT Pipeline and Wireline Design and Construction Specifications prior to beginning work. These documents are available at the following

URL: <http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/CSXspecs.pdf>.

The Contractor is responsible for all damages, delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Contractor's operations within or adjacent to railroad company right-of-way.

c. Watchman or Flagging Services: The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the project. The Department will reimburse the railroad company for the cost thereof. Contractor will schedule work that affects railroad operations so as to minimize the need for protective services by the railroad company.

Contractor will submit schedules and schedule changes to the Engineer so the Department can coordinate the scheduling of flagging resources. Projects with less than 20 consecutive days of flagging services require a CSXT short-term flagger and 45 days written advance notice. Contractor will provide the 45 days written advance notice to the Engineer. Projects with 20 or more consecutive days of flagging services require a CSXT long term flagger. The Department will provide the 6 months written advance notice to CSXT.

6. *Utilities*

a. *Arrangements for Protection or Adjustment:* Contractor shall not commence work at points where the construction operations are adjacent to utility facilities until all necessary

arrangements have been made for removal, temporary removal, relocation, de-energizing, deactivation or adjustment with the utility facilities owner to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Contractor is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Contractor's operations.

Contractor shall not request utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment when work can be accomplished within the utility work schedules. In the event that removal, temporary removal, relocation, de-energizing, deactivation, or adjustment of a utility or a particular sequence of timing in the relocation of a utility is necessary and has not been addressed in a utility work schedule, the Engineer will determine the necessity for any such utility work. Contractor shall coordinate such work as to cause the least impediment to the overall construction operations and utility service. The Department is not responsible for utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment work where such work is determined not necessary by the Engineer or done solely for the benefit or convenience of the utility owner or its contractor, or the Contractor.

b. *Cooperation with Utility Owners:* Contractor will cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support, Contractor will promptly notify the proper authority and cooperate with the authority in the prompt restoration of service. If water service is interrupted and the Contractor is performing the repair work, the Contractor shall work continuously until the service is restored. Do not begin work around fire hydrants until the local fire authority has approved provisions for continued service.

c. *Utility Adjustments:* Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Contractor will cooperate with the various utility construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Contractor shall repair all damage to the relocated utilities resulting from his operations at no expense to the Department. The requirements of General Conditions Paragraph 6.07 N.1. and N.2 (added by paragraph 5 of these Supplementary Conditions) outline the Contractor's responsibility for protecting utility facilities. The Department will include in the Contract the utility authorities who are scheduled to perform utility work on the project.

The utility work which will be accomplished concurrently with the highway construction Contract will involve facilities owned by other agencies. Utility Schedules (Utility Relocation and/or Work Schedules) for these agencies are posted on the Department's website at the following URL address:
<ftp.dot.state.fl.us/permitsandutilityworkschedules/> . Take responsibility to obtain this information and comply with all requirements posted on this website up through five

calendar days before the opening of bids.

Where utility work must be coordinated with highway construction operations, the portion of the anticipated utility work period covering such concurrent work may or may not begin on the day highway construction commences and may or may not be consecutive days.

The anticipated scheduling of new work, adjustments and/or relocation work are included on the Utility Schedules.

More precise scheduling to accomplish utility work in the most expeditious manner that is feasible will be established at the preconstruction conference as provided in General Conditions Paragraph 2.11.

The Utility Schedules, shall be used in conjunction with the utility sheets included in the roadway plans.

If the Department's website cannot be accessed, contact the Department's Specifications office Web Coordinator at (850) 414 4101.

d. *Weekly Meetings:* Contractor will conduct weekly meetings on the job site with all the affected utility companies and the Engineer in attendance to coordinate project construction and utility relocation. Contractor will submit a list of all attendees one week in advance to the Engineer for approval.

Contractor will provide for these Weekly meetings the Planning Schedule as specified in General Conditions Paragraph 2.08 d.

O. *Opening Sections of Highway to Traffic.*

Whenever any bridge or section of roadway is in acceptable condition for travel, the Engineer may direct the Contractor to open it to traffic. The Department's direction to open a bridge or roadway does not constitute an acceptance of the bridge or roadway, or any part thereof, or waive any Contract provisions. Perform all necessary repairs or renewals, on any section of the roadway or bridge thus opened to traffic under instructions from the Engineer, due to defective material or work or to any cause other than ordinary wear and tear, pending completion and the Engineer's acceptance of the roadway or bridge, or other work, at no expense to the Department.

P. *Scales for Weighing Materials.*

1. *Applicable Regulations:* When determining the weight of material for payment, Contractor will use scales meeting the requirements of Chapter 531 of Florida Statutes, pertaining to specifications, tolerances, and regulations, as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture.

2. *Base for Scales:* Contractor will place such scales on a substantial horizontal base to provide adequate support and rigidity and to maintain the level of the scales.

3. *Protection and Maintenance:* Contractor will maintain all scale parts in proper condition as to level and vertical alignment, and fully protect them against contamination by dust, dirt, and other matter that might affect their operation.

Q. *Regulations of Air Pollution from Asphalt Plants.*

1. *General:* Contractor will perform all work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 17-2 and 17-5 of the Rules and Regulations of the Department of Environmental Protection, and to any part of the State Implementation Plan applicable to the project. See also Specifications 110-9.2 regarding burning of debris.

2. *Dust Control:* Contractor will ensure that excessive dust is not transported beyond the limits of construction in populated areas. The Contractor may control dust for embankments or other cleared or unsurfaced areas by applying water or calcium chloride, as directed by the Engineer. Use calcium chloride in accordance with Specifications Section 102-5. When included in the plans, install mulch, seed, sod, or temporary paving as early as practical. Control dust during the storage and handling of dusty materials by wetting, covering, or other means as approved by the Engineer.

3. *Asphalt Material:* Contractor will use only emulsified asphalt, unless otherwise stated in the plans and allowed by Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

4. *Asphalt Plants:* Contractor will operate and maintain asphalt plants in accordance with Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Provide the plant site with a valid permit as required under Chapter 17-2 prior to start of work.

R. *Provisions for Convenience of Public:* Contractor will schedule construction operations so as to minimize any inconvenience to adjacent businesses or residences. Where necessary, the Engineer may require the Contractor to first construct the work in any areas along the project where inconveniences caused by construction operations would present a more serious handicap. In such critical locations, where there is no assurance of continuous effective prosecution of the work once the construction operations are begun, the Engineer may require the Contractor to delay removal of the existing (usable) facilities.

S. *Limitations of Operations.*

1. *Night Work:* During active nighttime operations, Contractor will furnish, place and maintain lighting sufficient to permit proper workmanship and inspection. Use lighting with 5 ft-cd minimum intensity. Arrange the lighting to prevent interference with traffic or produce undue glare to property owners. Operate such lighting only during active nighttime construction activities. Provide a light meter to demonstrate that the minimum light intensity is being maintained.

Lighting may be accomplished by Contractor by the use of portable floodlights, standard equipment lights, existing street lights, temporary street lights, or other lighting methods approved by the Engineer.

Contractor will submit a lighting plan at the Preconstruction Conference for review and acceptance by the Engineer. Submit the plan on standard size plan sheets (not larger than 24 by 36 inch), and on a scale of either 100 or 50 feet to 1 inch. Do not start night work prior to the Engineer's acceptance of the lighting plan.

During active nighttime operations, Contractor will furnish, place and maintain variable message signs to alert approaching motorists of lighted construction zones ahead. Operate the variable message signs only during active construction activities.

2. *Sequence of Operations:* Contractor shall not open up work to the prejudice of work already started. The Engineer may require the Contractor to finish a section on which work is in progress before starting work on any additional section.

3. *Interference with Traffic:* At all times Contractor will conduct the work in such manner and in such sequence as to ensure the least practicable interference with traffic. Operate all vehicles and other equipment safely and without hindrance to the traveling public. Park all private vehicles outside the clear zone. Place materials stored along the roadway so as to cause no obstruction to the traveling public as possible.

Where existing pavement is to be widened and stabilizing is not required, Contractor will prevent any open trench from remaining after working hours by scheduling operations to place the full thickness of widened base by the end of each day. Do not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least 1/4 mile along the road and where either the work of excavation has not been started or the base has been completed.

4. *Coordination with other Contractors:* Contractor will sequence the work and dispose of materials so as not to interfere with the operations of other Contractors engaged upon adjacent work; join the work to that of others in a proper manner, in accordance with the spirit of the Contract Documents; and perform the work in the proper sequence in relation to that of other contractors; all as may be directed by the Engineer.

Each contractor is responsible for any damage done by him or his agents to the work performed by another contractor.

5. *Drainage:* Contractor will conduct the operations and maintain the work in such condition to provide adequate drainage at all times. Do not obstruct existing functioning storm sewers, gutters, ditches, and other run-off facilities.

6. *Fire Hydrants:* Contractor will keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times, and do not place any material or obstruction within 15 feet of any fire hydrant.

7. *Protection of Structures:* Contractor shall not operate heavy equipment close enough to pipe headwalls or other structures to cause their displacement.

8. *Fencing:* Contractor will erect permanent fence as a first order of business on all projects that include fencing where the Engineer determines that the fencing is necessary to maintain the security of livestock on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property.

6. Added to General Conditions, ARTICLE 14, PAYMENT TO CONTRACTOR AND COMPLETION, is the following, where applicable to work completed and payment:

Item 1- *Measurement of Quantities.*

A. *Measurement Standards:* The Engineer will measure all work completed under the Contract in accordance with the United States Standard Measures.

B. *Method of Measurements:* The Engineer will take all measurements horizontally or vertically.

C. *Determination of Pay Reduction:* In measurement of areas of work, where pay reductions are to be assessed, the Engineer will use the lengths and/or widths in the calculations based upon station to station dimensions in the Contract Documents, the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the final surface of the completed work within the neat lines shown in the Contract Documents or designated by the Engineer. The Engineer will use the method or combination of methods of measurement which will reflect with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

Failure on the part of the Contractor to construct any item of work to plan or authorized dimensions within the specification tolerances will result in: reconstruction to acceptable tolerances at no additional cost to the Department; acceptance at no pay; or, acceptance at reduced pay, all at the discretion of the Engineer.

When acceptance at no pay occurs for any material, the Engineer will apply a reduction in payment for the material in question based on the weighted average unit price in the Six Month Moving Statewide Averages report. The dates will be the six months prior to the letting date for this Contract.

D. *Construction Outside Authorized Limits:* The Engineer will not pay for surfaces constructed over a greater area than authorized, or for material that the Contractor has moved from outside of slope stakes and lines shown on the plans, except where the Engineer provides written instruction for the Contractor to perform such work.

E. *Truck Requirements:* Contractor will provide all trucks with numbers and certify that all trucks used have a manufacturer's certification or permanent decal showing the truck capacity rounded to the nearest tenth of a cubic yard placed on both sides of the truck. This capacity will include the truck body only and any side boards added will not be included in the certified truck body capacity. Ensure the lettering and numbers are legible for identification purposes at all times.

7. Added to General Conditions, ARTICLE 17, MISCELLANEOUS, is the following paragraph 17.06:

Department websites referred to in the Contract Documents and forms may on occasion refer to Standard Specifications for Road and Bridge Construction, Supplemental Specifications, and Special Provisions. The Standard Specifications for Road and Bridge Construction, Supplemental Specifications, and Special Provisions have been replaced on this project by General Conditions, Supplementary Conditions, and Specifications.

8. Added to General Conditions, ARTICLE 6, CONTRACTOR'S RESPONSIBILITIES, is the following paragraph 6.21:

Contractor shall sign and obtain the signatures of the involved artists on an agreement to be provided by the Department, with respect to art work on this project, transferring to the Department all ownership, title, interest, and rights in and to the art work and in and to the copyright in the art work, and waiving all rights and claims with respect to the art work under the Visual Artists Rights Act of 1990, 17 U.S.C. section 106A and 113 (d) ("VARA") and any other or similar law.

SECTION 2 - FTA TERMS AND CONDITIONS

REQUIRED CONTRACT PROVISIONS FOR FEDERAL TRANSIT ADMINISTRATION (FTA) FEDERAL-AID CONSTRUCTION CONTRACTS

I.	FLY AMERICA REQUIREMENTS.....	21
II.	CARGO PREFERENCE REQUIREMENTS.....	21
III.	SEISMIC SAFETY	21
IV.	ENERGY CONSERVATION.....	21
V.	CLEAN WATER.....	22
VI.	LOBBYING.....	22
VII.	ACCESS TO RECORDS	23
VIII.	FEDERAL CHANGES.....	24
IX.	CLEAN AIR.....	25
X.	RECYCLED PRODUCTS.....	25
XI.	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	25
XII.	CONTRACT WORK HOURS AND SAFETY STANDARDS	30
XIII.	NO OBLIGATION BY FEDERAL GOVERNMENT	31
XIV.	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS	31
XV.	GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)....	32
XVI.	PRIVACY ACT.....	32
XVII.	CIVIL RIGHTS REQUIREMENTS.....	33
XVIII.	BUY AMERICA REQUIREMENTS	34
XIX.	DRUG AND ALCOHOL TESTING	35
XX.	SENSITIVE SECURITY INFORMATION.....	36
XXI.	INTELLIGENT TRANSPORTATION SYSTEMS.....	36
XXII.	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	36

FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

CARGO PREFERENCE REQUIREMENTS

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

CLEAN WATER

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the

simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor shall provide to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, access to all third party records as required by 49 U.S.C. section 5325 (g). The Contractor shall further provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure Project management as determined by FTA.
6. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
7. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
8. Contractor shall also include in its subcontracts the requirement that the subcontractors shall provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives access to all third party contract records as required by 49 U.S.C. section 5325 (g), and shall further provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure Project management as determined by FTA.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable Federal laws, regulations, and directives, including without limitation those listed directly or by reference in the Master Agreement between the Florida Department of Transportation and FTA, as they may be amended or promulgated from time to time during the term of this contract, except to the extent that FTA determines otherwise in writing, which Master Agreement is hereby incorporated herein by this reference. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in the Master Agreement, are minimum requirements, unless modified by FTA.

Contractor's failure to so comply shall constitute a material breach of this contract.

CLEAN AIR

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers,

which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; 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 the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(2) **Withholding** - The Department 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, the Department 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 until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Transit Administration 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 owner, as the case may be, for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose - from the Wage and Hour Division Web site at

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Transit Administration if the agency is a party of the contract, but if the agency is not such a party the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a

subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(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 provided under section 5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5, 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 Regulations, 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 Optional 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 the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, 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 or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

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

(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 classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by

appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

CONTRACT WORK HOURS AND SAFETY STANDARDS

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

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

payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

NO OBLIGATION BY FEDERAL GOVERNMENT

(1) The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by

FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The contractor is required to comply with 2 CFR 1200 and 2 CFR 180, Subpart 3, and must include the requirement to comply with 2 CFR 180, Subpart 3, as supplemented by 2 CFR 1200, in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 1200 and 2 CFR 180, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

PRIVACY ACT

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

CIVIL RIGHTS REQUIREMENTS

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, and any amendments thereto, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver, or except as provided in 49 C.F.R. 661.11. General waivers are listed in 49 C.F.R. 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.-

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below).

If steel, iron, or manufactured products (as defined in 43 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 43 CFR 661.13(b).

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661

Date _____

Signature _____

Company _____

Name _____

Title _____

Certificate of Non-Compliance with Buy American Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.

Date _____

Signature _____

Company _____

Name _____

Title _____

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in 49 CFR 661.13 (b).

Certificate of Compliance with Buy America Rolling Stock Requirements.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) and the applicable regulations at 49 CFR.

Date _____

Signature _____

Company _____

Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C) Buy American Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2) (C) and the applicable regulations in 49 CFR 661.7.

Date _____

Signature _____

Company _____

Name _____

Title _____

DRUG AND ALCOHOL TESTING

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the Florida Department of Transportation, to

inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The Florida Department of Transportation will hereafter set the date before which contractor must certify annually its compliance with its compliance with Parts 655 and the date before which it must submit the Management Information System (MIS) reports to

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/DAMIS/default.asp>

and Contractor shall comply with those dates for certification and submitting the MIS reports. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

SENSITIVE SECURITY INFORMATION

Contractor must protect, and take measures to ensure that its subcontractors protect, "sensitive security information" made available during the administration of the contract or subcontract to ensure compliance with 49 U.S.C. Section 40119 (b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114 (r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR 1520.

INTELLIGENT TRANSPORTATION SYSTEMS

Intelligent transportation system (ITS) property and services provided by Vendor must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et. seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Florida Department of Transportation requests which would cause Florida Department of Transportation to be in violation of the FTA terms and conditions.