



**INVITATION TO BID ITB #2024-12-02**  
**MIAMI SHORES VILLAGE**  
**MULTIMODAL MOBILITY IMPROVEMENTS ALONG NORTH MIAMI AVENUE**  
**FROM NE 91ST STREET TO NE 111TH STREET - FM 441638-1-58-01**

Dear Potential Bidder:

Miami Shores Village, Florida is actively seeking a qualified, experienced, and licensed contractor to submit sealed bids for the construction of multimodal mobility improvements, in Accordance With The Requirements stated herein, no later than 2:30 PM on **Thursday, January 30, 2025** For **"ITB No. 2024-12-02 - Miami Shores Village Multimodal Mobility Improvements along North Miami Avenue from NE 91st Street to NE 111th Street."**

A portion of the project will be funded by the Florida Department of Transportation (FDOT). **Prior to award the prime contractor must be pre-qualified by Florida Department of Transportation (FDOT) in the following work class: 10. Flexible Paving. The prime contractor or subcontractor must be pre-qualified in work classes: 10. Flexible Paving and 28. Pavement Markings.**

The pre-qualification process for FDOT can be located at the following link:  
[https:// www.fdot.gov/contracts/prequal-info/prequalified.shtm](https://www.fdot.gov/contracts/prequal-info/prequalified.shtm)

**A non-mandatory pre-bid conference will be held on Wednesday, January 8, 2025 at 10:30 a.m.,** at Miami Shores Village Hall, 10050 N.E. 2nd Ave., Miami Shores, FL 33138. Contractors are encouraged to attend the pre-bid conference. There is not a scheduled visit to the site before or after the pre-bid Meeting, therefore, potential bidders are encouraged to conduct site visits on their own. Interested firms may secure the solicitation package and all other pertinent information by visiting the Village website:<https://www.msvfl.gov/departments/procurement/CurrentSolicitations>

The Miami Shores Village website is the preferred sourcing of notices, addenda, bids and other communications. The Village is not under any obligation and does not guarantee that prospective bidders will receive email notifications concerning the posting, amendments or the close of the solicitation. Prospective bidders are responsible for checking the Village website for information, addendum and updates concerning the solicitation. Unless otherwise noted, bid documents are available at no charge.

Questions regarding this solicitation shall be submitted in writing to [bids@msvfl.gov](mailto:bids@msvfl.gov) no later than **5:00 p.m., Wednesday, January 15, 2025.** Responses to those questions considered material to the solicitation will be made available as formal addenda located on the Village's website. It is the responsibility of prospective bidders to ensure they are aware of all addenda issued relative to this solicitation.

All bids must be signed, sealed and to the Office of the Village Clerk, Miami Shores Village, 10050 N.E. 2nd Avenue, Miami Shores, FL 33138, no later than 2:30 p.m. **Monday, December 30, 2024** and clearly marked in the lower left-hand corner on the outside of the envelope: **"ITB NO. 2024-12-02 - Miami Shores Village Multimodal Mobility Improvements along North Miami Avenue from NE 91st Street to NE 111th Street."**

Bidders shall submit all bid documents in person or by mail. Any submission may be withdrawn until the date and time set above for the submissions. Facsimile or emailed bids shall be rejected and will not be accepted. The Village will not be responsible for any delays by delivery services or the US Postal Service. Late submittals will be returned.

Bidders shall submit one (1) original and two (2) copies of the submission in a sealed package. All copies should be on 8½" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the contractor. In addition, Bidders must include one (1) original copy of the submission on USB electronic media in printable Adobe or Microsoft Word format (or other format approved by the Village).

Bids must be submitted on the Bid Form as furnished by Miami Shores Village and must be accompanied by a bid security in the form of a Bid Bond, Certified Check, Cashier's Check, Treasurer's Check or Bank Draft, or other form of security acceptable to the Village in a sum not less than five percent (5%) of the amount of the base bid, as a guarantee that the bidder will enter into an agreement with the Village if the bid is accepted. Bids shall remain in force for ninety (90) days after the time of opening.

Miami Shores Village reserves the right to reject any and all submissions, to waive any and all irregularities in any submission, to solicit and re-advertise for bids and to make awards in the best interest of the Village.

**AMERICANS WITH DISABILITIES ACT:** Persons with disabilities needing a special accommodation to participate in this Invitation to Bid should contact the Village Clerk, Ysabely Rodriguez at (305)762- 4870 or email at [rodriguezy@msvfl.gov](mailto:rodriguezy@msvfl.gov), at least seven (7) days before the date that the accommodation is necessary.

**SCHEDULE OF EVENTS**

The schedule of events associated with bidding and contract award are as follows:

<b>Event</b>	<b>DATE</b>	<b>TIME</b>
<b>Bid Advertisement</b>	<b>Thursday, December 19, 2024</b>	<b>5:00 p.m.</b>
<b>Non-mandatory pre-bid Meeting</b>	<b>Wednesday, January 8, 2025</b>	<b>10:30 a.m.</b>
<b>Last Day for Receipt of Questions</b>	<b>Wednesday, January 15, 2025</b>	<b>5:00 p.m.</b>
<b>Anticipated Addendum Issuance</b>	<b>Monday, January 20, 2025</b>	<b>5:00 p.m.</b>
<b>Bids Due</b>	<b>Thursday, January 30, 2025</b>	<b>2:30 p.m.</b>
<b>Anticipated Village Council Award</b>	<b>*Tuesday, March 4, 2025</b>	<b>6:30 p.m.</b>
<b>Notice of Award Issued</b>	<b>* Thursday, March 6, 2025</b>	<b>8:30 a.m.</b>
<b>Contract Execution – Bonds and Insurance</b>	<b>* March 19, 2025</b>	<b>5:00 p.m.</b>
<b>Pre-Con Meeting and NTP</b>	<b>*March 25, 2025</b>	<b>10:00 a.m.</b>
<b>Construction Completion</b>	<b>*August 22, 2025</b>	<b>5:00 p.m.</b>

**\* dates are anticipated.**

*Pursuant to County Code, public notice is hereby given that a “Cone of Silence” is imposed concerning the Miami Shores Village competitive purchasing process, which generally prohibits communications concerning the ITB from the time of advertisement of the bid until such time as the Village Manager makes a written recommendation to the Village Council. For more information on the “Cone of Silence,” please contact the Village Clerk's Office at 305-762- 4870 or via email at [rodriguezy@msvfl.gov](mailto:rodriguezy@msvfl.gov).*

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## SECTION 1.0 GENERAL TERMS AND CONDITIONS

### 1.1 DEFINITIONS

When used in Contract Documents (defined below) or in related documents, the following terms shall have the meanings given below:

**Addendum:** A modification of the Plans, Specifications or other Contract Documents distributed to prospective Bidders prior to the opening of Bids/Proposals.

**Advertisement for Bids/Proposals:** The public notice inviting the submission of bids for the work.

**Bid/Proposal Bond:** A bond executed by a Bidder/Proposer and its Surety in the attached form guaranteeing that the Bidder/Proposer, if awarded the Contract will execute the same and will timely furnish the required Performance Bond, Payment Bond, and evidence of Insurance.

**Bidder:** Any individual, firm, partnership or corporation submitting a Bid in accordance with the Instructions to Bidders.

**Bid/Proposal Documents:** Bid Guarantee or bid deposit. The Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Bond, Contract, Performance Bond, Payment Bond, General Conditions, Special Provisions, Technical Specifications and Plans, together with all Addenda.

**Bid/Proposal Form:** The form on which bids / proposals are submitted.

**Calendar Day:** Every day shown on the calendar.

**Change Order:** A written agreement executed by the Village, the Contractor and the Contractor's Surety, covering modifications to the Contract recommended by the Project Manager and approved by the Village Manager and/or Village Council.

**Contract:** The written agreement between the Village and the Bidder for performance of the Work in accordance with the requirements of the Contract Documents and for the payment of the agreed consideration.

**Contract Date:** The date on which the Agreement is effective.

**Contract Documents:** The Instructions to Bidders, Bid Form, Bid Bond, Contract, Performance and Payment Bond, General Conditions, Special Conditions, DBE Form 275-030-11, FHWA 1273 and Scope of Work, together with all Addenda, Change Orders, Schedules and Shop Drawings.

**Contract Manager:** Miami Shores Village Manager or designee or duly authorized representative designated to manage the Contract.

**Contractor:** The individual, firm, partnership, corporation, or joint venture whose bid is accepted and who enters into a Contract with Miami Shores Village and who is liable for the acceptable performance of the work and for the payment of all legal debts pertaining to the Work.

**Contract Time:** The number of days allowed for completion of the work. The Contract Time will be stipulated in the Bid Form, unless extended by a Change Order. All contract time shall be measured in calendar days.

**Days:** Reference made to Days shall mean consecutive calendar days.

**Deliverables:** All documentation and any items of any nature submitted by the Contractor to the Village's Contract Manager for review and approval in writing pursuant to the terms of the Agreement.

**Lessee:** Any individual, partnership or corporation having a tenant relationship with Miami Shores Village.

**Liquidated Damages:** The amount that the Contractor accepts, as stipulated in the Bid Form, which will be deducted from the Contract Sum for each Calendar day of delay due to a Non-excusable Delay to be determined by the Village's Contract Manager.

**Notice to Proceed (NTP):** The written communication issued by the Village to the Contractor directing the Contractor to begin

contract work and establishing the date of commencement of the work.

**Owner:** The term Owner as used in this Contract shall mean the Miami Shores Village.

**Performance and Payment Bonds:** Bonds executed by the Contractor and his Surety, assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the Contract Documents and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work.

**Plans:** The drawings or reproductions thereof, prepared and sealed by the Architect/Engineer, which show the locations, character, dimensions and details of the work to be done and which are part of the Contract Documents.

**Project:** The construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's obligations.

**Project Cost:** The sum of the construction costs, allowances for contingencies, the total cost of design professional and related services provided by consultant, and allowances for such other items as charges of all other professionals and consultants.

**Project Manager:** The Village's authorized representative designated to manage the Project.

**Proposal/Bid Form:** The form on which proposals / bids are submitted

**Scope of Service:** Document which details the work to be performed by the Bidder.

**Subcontractor or Sub-consultant:** Any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf of and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

**Village:** A political subdivision, Incorporated Village within Miami-Dade County of the State of Florida, whose governing body is a Village

Council consisting of a Mayor, a Vice Mayor and three (3) Village Council members.

**Village Manager:** The Manager of Miami Shores Village, Florida.

The words "**Work**", "**Services**", "**Program**", or "**Project**": All matters and things required to be done by the Bidder in accordance with the provisions of the Contract.

The words "**Directed**", "**Required**", "**Permitted**", "**Ordered**", "**Designated**", "**Selected**", "**Prescribed**", or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Village's Contract Manager; and similarly the words "**approved**", "**acceptable**", "**satisfactory**", "**equal**", "**necessary**", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Village's Contract Manager. In resolving disputes and in all respects the Village Manager's decision shall be final.

## 1.2 VENDOR NOTIFICATION

It is the policy of the Village to encourage full and open competition among all available qualified vendors. All vendors regularly engaged in the type of work specified in the Bid Solicitation are encouraged to submit bids. To get solicitation document, specifications and updates go to: <https://www.miamishoresvillage.com/department/businesses/bids-purchasing#>

## 1.3 CONE OF SILENCE AND REQUEST FOR ADDITIONAL INFORMATION

"Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or Invitation to Bid ("ITB").

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, all solicitations, once advertised and until an award recommendation has been forwarded to the appropriate authority are under the "Cone of Silence". Any communication or inquiries, except for clarification of process or procedure already contained in the solicitation, are to be made in writing to the attention of the project contact herein. Such inquiries or request for information shall be submitted and shall

contain the requester's name, address, and telephone number.

During the Cone of Silence, the following is prohibited: Any communication regarding this solicitation between a potential vendor, service provider, Bidder, lobbyist, or consultant and the Village's professional staff including, but not limited to Village Council, the Village Manager and his or her staff. All communication regarding this solicitation should be sent in writing only to the Procurement Administrator at [bids@msvfl.gov](mailto:bids@msvfl.gov), Miami Shores Village Purchasing Division, 10050 NE 2<sup>nd</sup> Ave., Miami Shores Village, FL 33138.

#### **1.4 BIDDERS RESPONSIBILITIES**

Bidders are required to submit their bids upon the following express conditions:

- A. Bidders shall thoroughly examine the drawings, specifications, schedules, instructions, and all other contract documents.
- B. Bidders shall make all investigations necessary to thoroughly inform themselves regarding site(s) and facilities for delivery of material and equipment as required by the solicitation conditions. No plea of ignorance, by the Bidder, of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the Village or the compensation due the Bidder.
- C. Bidders are advised that all Village contracts are subject to all legal requirements provided for in Resolution # 1124-07 and applicable State Statutes and Federal Statutes.

#### **1.5 SUBMISSION OF BIDS**

- A. Bids and Addenda thereto shall be hand-delivered or mailed by the due/time specified. Late bids will not be accepted.

#### **1.6 ADDENDA**

The Village may issue an addendum in response to any inquiry received, prior to the bid

opening, which changes, adds to, or clarifies the terms, provisions, or requirements of the solicitation. The Bidder should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in this solicitation document or in any addenda issued. Where there appears to be a conflict between this solicitation and any addenda, the last addendum issued shall prevail. It is the Bidder's responsibility to ensure receipt of all addenda and any accompanying documents.

Bidder(s) shall acknowledge receipt of any formal Addenda. Failure to acknowledge Addenda shall deem the response non-responsive provided, however, that the Village may waive this requirement in its best interest.

#### **1.7 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:**

The Village reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process.

**The Village reserves the right to reject any or all bids prior to award.**

Reasonable efforts will be made to either award the contract or reject all bids within one hundred and twenty (120) calendar days after Bids opening date.

#### **1.8 WITHDRAWAL OF BID**

- A. Bids may not be withdrawn and shall be deemed enforceable for a period of one hundred twenty (120) days after the time set for the Bid opening.
- B. Bids may be withdrawn prior to the time set for the Bid opening. Such request must be in writing.
- C. The Village will permanently retain as liquidated damages the Bid deposit furnished by any Bidder who requests to withdraw a Bid after the Bid opening.

#### **1.9 LATE BIDS OR MODIFICATIONS**

Only Bids received as of opening date and time will be considered timely. Bids and modifications received after the time set for the Bid opening will

be rejected as late.

**1.10 CONFLICTS WITHIN THE SOLICITATION**

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, Scope of Services, Bid Submittal Section, or any addendum issued, the order of precedence shall be as follows: The last addendum issued, the Special Conditions, General Terms and Conditions, the Scope of Services, and the Bid Submittal Section.

**1.11 CLARIFICATION OR OBJECTION TO BID SPECIFICATIONS**

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications or other bid documents or any part thereof, he/she may submit to the Purchasing Division on or before the date and time stated herein, a request for clarification. All such requests for clarification shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the bid, if made, will be made only by Addendum duly issued. The Village will not be responsible for any other explanation or interpretation of the proposed made or given prior to the award of the contract.

**1.12 INVOICING/PAYMENT**

In accordance with Florida State Statutes, Chapter 218, payment will be made within forty-five (45) days after receipt of services and a proper invoice. The Village cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D.

**1.13 COMPETENCY OF BIDDERS**

A. Pre-award inspection of the Bidder's facility may be made prior to the award of contract. Bids will be considered only from firms which are regularly engaged in the business of providing the goods and/or services as described in this solicitation(s); have a record of performance for a reasonable period of time; and have sufficient financial support, equipment and organization to ensure that they can satisfactorily deliver the material and/or services if awarded a Contract under the terms and conditions herein stated. The terms "equipment and

organization" as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practices in the industry and as determined by the proper authorities of the Village.

B. The Village may consider any evidence available to it of the financial, technical, and other qualifications and abilities of a Bidder, including past performance (experience) in making the award in the best interest of the Village. In all cases Miami Shores Village shall have no liability to any contractor for any costs or expense incurred in connection with this bid or otherwise.

**1.14 NOTICE REQUIREMENTS UNDER THE AGREEMENT**

All notices required or permitted under the Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**To the Village Manager:**

Miami Shores Village  
Office of the Village Manager  
10050 NE 2<sup>nd</sup> Ave.  
Miami Shores Village, FL 33138  
Phone: (305) 762-4851

and,

**To the Village Attorney:**

Miami Shores Village  
Office of the Village Attorney  
10050 NE 2<sup>nd</sup> Ave.  
Miami Shores Village, FL 33138  
Phone: (305) 349-2300

**To the Bidder:**

Notices will be sent to the Bidder at the e-mail address and to the person listed in the bid, as applicable.

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices

shall be deemed given upon receipt by the addressee.

### 1.15 EMPLOYEES

All employees of the Bidder shall be considered to be at all times the sole employees of the Bidder under the Bidder's sole direction, and not employees or agents of Miami Shores Village. The Bidder shall supply competent and physically capable employees and the Village is authorized to require the Bidder to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on Village property is not in the best interest of the Village.

### 1.16 AWARD OF BID

Award will be made to the lowest responsive responsible bidder, quoting the lowest lump sum price for the product/service that will serve the needs of the Village.

The Village also reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process.

- A. Responsibility: In order to be considered as a responsible firm, firm shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, must possess the full capability, including financial and technical, to perform as contractually required, and must be able to fully document the ability to provide good faith performance.
- B. Responsiveness: In order to be considered responsive to the solicitation, the firm's bid shall fully conform in all material respects to the solicitation and all of its requirements, including all form and substance.

### 1.17 TIE BREAKER:

Occasionally, bids end in a tie. When this occurs, the Village will take actions to break the tie based upon consideration of the following in the order listed:

1. Past Performance on similar projects.
2. Workload capacity (based on current volume of work).

### 1.18 DELIVERY:

Time will be of the essence for any orders placed as a result of this ITB. The Village reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the Village.

### 1.19 PROTESTS

A. Right to protest. Any Bidder or interested parties (hereinafter collectively referred to as the "Bidder") who has a substantial interest in and is aggrieved in connection with the solicitation or proposed award of the ITB may protest to the Village Manager or designee. Protests arising from the decisions and votes of any evaluation or selection committee shall be limited to protests based upon alleged deviation(s) from the specifications, requirements and/or terms set forth in the ITB.

1. Any protest concerning the ITB specifications, requirements, and/or terms must be made within three business days (for the purposes of this section, "business day" means a day other than Saturday, Sunday, or a national holiday), from the time the facts become known and, in any case, at least seven business days prior to the opening of the responses. Such protest must be made in writing (as provided for herein *Notice Requirements*) to the Village Manager and Village Attorney, and such protest shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No protest shall be accepted unless it complies with the requirements of this section. Failure to timely protest ITB specifications, requirements and/or terms is a waiver of the ability to protest the specifications, requirements and/or terms.

B. The Village may request reasonable reimbursement for expenses incurred in processing any protest hereunder, which expenses shall include, but not be limited to, staff time, legal fees, and expenses (including expert witness fees), reproduction of documents and other out-of-pocket expenses.



- C. Authority to resolve protests. The Village Manager or designee shall have the authority to settle and resolve a protest concerning the solicitation or award of the ITB.
- D. Responsiveness. Prior to any decision being rendered under this section with respect to a protest, the Village Manager and the Village Attorney, or their respective designees, shall certify whether the submission of the response to the ITB in question is responsive. The parties to the protest shall be bound by the determination of the Village Manager and the Village Attorney with regard to the issue of responsiveness.
- E. Decision and appeal procedures. If the protest is not resolved by mutual agreement, the Village Manager and the Village Attorney, or their respective designees, shall promptly issue a decision in writing. The decision shall specifically state the reasons for the action taken and inform the protestor of his or her right to challenge the decision. Any person aggrieved by any action or decision of the Village Manager, the Village Attorney, or their respective designees, with regard to any decision rendered under this section may appeal said decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions including damages suffered by the Village and attorney's fees incurred by the Village in defense of such wrongful action.
- F. Distribution. A copy of each decision by the Village Manager and the Village Attorney shall be mailed or otherwise furnished immediately to the protestor.
- G. Stay of procurements during protests. In the event of a timely protest under this section, the Village shall not proceed further with the solicitation or with the award pursuant to the ITB unless a written determination is made by the Village Manager, that the award pursuant to the ITB must be made without delay in order to protect a substantial interest of the Village.
- H. The institution and filing of a protest under this section is an administrative remedy that

shall be employed prior to the institution and filing of any civil action against the Village concerning the subject matter of the protest.

- I. Protests not timely made under this section shall be barred. Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived.
- J. At the time, the Village Manager's written recommendation for award of the ITB is presented at a meeting of the Mayor and Village Council, the Village Attorney, or designee, shall present a report to inform the Mayor and Village Council of any legal issues relative to any protest filed in connection with the ITB in question.
- K. The determination of the Village Manager and the Village Attorney with regards to all procedural and technical matters shall be final.

**1.20 INTENTIONAL LEFT BLANK**

**1.21 AGREEMENT**

An agreement shall be sent to the awarded Bidder to be signed, witnessed, and returned to the Village for execution. The Village will provide a copy of the fully executed agreement to the awarded Bidder.

**1.22 DISQUALIFICATION OF BIDDERS**

A Bidder may be disqualified temporarily or permanently, and his/her bid(s) rejected for:

Poor performance or default, in the Village's opinion, on previous contracts with the Village.  
 Poor performance or default, in the Village's opinion, on previous contracts with other public entities.  
 Insufficient financial or company size, in the Village's opinion, to perform the requirements of the contract.

**1.23 SUBCONTRACTING**

The Bidder will not assign, transfer or sub-contract any work either in whole or in part, without prior written approval of the Village. The Bidder shall furnish in writing to the Village the names of the Subcontractors. The Bidder shall not contract with any Subcontractors to whom the Village has made reasonable and timely

objection. The final Subcontractors list shall be presented to the Village.

#### **1.24 ASSIGNMENT**

The successful Bidder shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the Village and Village's approval.

#### **1.25 DEBARRED OR SUSPENDED BIDDERS OR PROPOSERS**

The Bidder or Proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency

#### **1.26 FRAUD AND MISREPRESENTATION**

Pursuant to Section 2-8-1.4 of the Miami-Dade County Code, any individual, corporation, or other entity that attempts to meet its contractual obligations with the Village through fraud, misrepresentation, or material misstatement, may be debarred from doing business with the Village. The Village as further sanction may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

#### **1.27 COLLUSION**

The Bidder, by affixing his signature to this bid, agrees to the following: "Bidder certifies that his/her bid is made without previous understanding, agreement, or connection with any person, firm or corporation, making a bid for the same items, or the initiating Village department, and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

#### **1.28 PATENTS AND COPYRIGHTS**

It shall be understood and agreed that by the submission of a bid, the Bidder, if awarded a contract, shall save harmless and fully indemnify Miami Shores Village, Florida Dept. of Transportation and any of its officers or agents from any and all damages that may, at any

time, be imposed or claimed for infringement of any patent right, trademark, or copyright, of any person or persons, association, or corporation, as the result of the use of such articles by the Village, or any of its officers, agents, or employees, and of which articles the contractor is not the patentee, assignee, licensee, or owner, or lawfully entitled to sell same.

A. The Contractor shall be liable and responsible for any and all claims made against the Village for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the Village's continued use of the deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the Village, FDOT and defend any action brought against the Village with respect to any claim, demand, and cause of action, debt, or liability.

B. The Contractor shall be solely responsible for determining and informing the Village whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The Village may reject any deliverable that it believes to be the subject of any such litigation or injunction, or if, in the Village's judgment, use thereof would delay the Work or be unlawful.

#### **1.29 PUBLIC RECORDS LAW**

Pursuant to Florida Statute 119.07, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Sealed Bids and Proposals become subject to this statute, notwithstanding Bidders' requests to the contrary, at the time the Village provides notice of a

decision or intended decision, or thirty (30) days after bid or bid opening, whichever is earlier.

Financial statements submitted in response to a request by the Village are confidential and exempt from disclosure. Data processing software obtained under a licensing agreement which prohibits its disclosure is also exempt.

Bidders are hereby notified and agree that all information submitted as part of, or in support of bid/proposal submittals will be available for public inspection after opening of bids/proposals in compliance with Chapter 119 of the Florida Statutes. The Bidder shall not submit any information in response to this invitation which the Bidder considers to be a trade secret, proprietary or confidential. The submission of any information to the Village in connection with this ITB shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to the Bidder. In the event that the Bidder submits information to the Village in violation of this restriction, either inadvertently or intentionally and clearly identifies that information in the bid/proposal as protected or confidential, the Village shall endeavor to redact and return that information to the Bidder as quickly as possible, and if appropriate, evaluate the balance of the bid/proposal. The redaction or return of information pursuant to this clause may render a bid/response non-responsive.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (TELEPHONE NUMBER: (305)762-4870, EMAIL: [RODRIGUEZY@MSVFL.ORG](mailto:RODRIGUEZY@MSVFL.ORG) AND MAILING ADDRESS: VILLAGE CLERK, MIAMI SHORES VILLAGE, 10050 NE 2<sup>ND</sup> AVENUE, MIAMI SHORES**

## **VILLAGE, FLORIDA 33138**

### **1.31 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

To the extent provided by law, awarded Contractor shall indemnify, defend, and hold harmless the Village and the State of Florida Department of Transportation (FDOT) including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor.

The foregoing indemnification shall not constitute a waiver of the Florida Department of Transportation's or Village's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify Village for the negligent acts or omissions of Village, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by Contractor to indemnify the Florida Department of Transportation for the negligent acts or omissions of the Florida Department of Transportation, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of the agreement.

### **1.33 CHOICE OF LAW**

If and when this contract is disputed, and should it be necessary to litigate, the substantive and procedural laws of the State of Florida shall govern the outcome of such litigation. This shall apply notwithstanding such factors which include, but are not limited to, place where contract is entered into, place where accident arises and choice of law principles.

### **1.35 CLAIMS**

Successful Bidder(s) will be responsible for making any and all claims against carriers for missing or damaged items.

### **1.36 MODIFICATION OF CONTRACT**

The contract may be modified by mutual consent,

in writing through the issuance of a modification to the contract, purchase order, change order or award sheet, as appropriate.

### **1.37 PUBLIC ENTITY CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/proposal on a contract to provide any goods or services to a public entity, may not submit a bid/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

### **1.38 DISCRIMINATION**

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

### **1.39 DRUG-FREE WORKPLACE PROGRAM**

Bidders are required to maintain and enforce a Drug-Free Workplace Program for the duration of the agreement and any extensions thereof. Bidders shall complete and submit a copy of the attached form with their bid.

### **1.40 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY**

Bidders shall sign and submit the attached form indicating understanding and compliance with the State's policies prohibiting solicitation and acceptance of gifts by public officers, employees, or candidates.

Failure to submit this signed form will result in your bid being declared non-responsive; provided, however, that the low Bidder may be given the opportunity to submit the form to the Village within five (5) calendar days after notification by the Village, if this is determined to be in the best interest of the Village.

### **1.41 ACCESS TO RECORDS**

The Consultant shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. In accordance with Subsection 20.055 (5)(c), F.S., the Inspector General and staff shall have access to any records, data, and other information of the Agency deemed necessary to carry out his or her duties. The Consultant agrees to make available to the Village Auditor or the Village Auditor's designee, during normal business hours and in Broward, Miami- Dade or Palm Beach Counties, all books of account, reports, and records relating to this contract. The Consultant shall retain all books of account, reports, and records relating to this contract for the duration of the contract and for five (5) years after the final payment under this Agreement, until all pending audits, investigations or litigation matters relating to the contract are closed, or until expiration of the records retention period prescribed by Florida law or the records retention schedules adopted by the Division of Library and Information Services of the Florida Village of State, whichever is later.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (TELEPHONE NUMBER): (305) 762-4870, EMAIL [RODRIGUEZY@MSVFL-.ORG](mailto:RODRIGUEZY@MSVFL-.ORG) AND MAILING ADDRESS: VILLAGE CLERK, MIAMI**

**SHORES VILLAGE, 10050 NE 2<sup>ND</sup>  
AVENUE, MIAMI SHORES  
VILLAGE, FLORIDA 33138**

**1.42 BEST INTEREST OF MIAMI SHORES  
VILLAGE**

Miami Shores Village reserves the right to reject any and all submissions.

**1.43 INSURANCE REQUIREMENTS**

The Bidder shall maintain and carry in full force during the Term the insurance required herein. Upon Village's notification, the Bidder shall furnish to the Purchasing Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

The successful Proposer shall furnish to the Village the certification or proof of insurance required by the provisions set forth above, within ten (10) days of notification of award.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by Miami Shores Village.

The Bidder shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the Village.

The selected firm shall provide a Certificate of Insurance listing Miami Shores Village and Florida Department of Transportation as "Certificate Holder" and "Miami Shores Village and Florida Department of Transportation is Additional Insurance as respect to coverage noted."

The certification or proof of insurance must contain a provision for notification to the Village thirty (30) days in advance of any material change in coverage or cancellation.

**A. WORKER'S COMPENSATION  
INSURANCE**

Worker's Compensation Insurance covering all

employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees), but no less than \$1,000,000 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of Miami Shores Village and its agents, employees and officials. The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

**B. LIABILITY INSURANCE**

- a. Naming Miami Shores Village and Florida Department of Transportation as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.
- b. Professional Liability (Errors and Omissions) coverage shall include coverage for all claims arising out of the services performed with limits not less than \$1,000,000 per claim. The aggregate limit shall either apply separately to this contract or shall be at least twice the required per claim limit.
- c. Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits on the attached certificate of insurance.

**C. WAIVER OF SUBROGATION**

Required insurance coverages shall not prohibit the service provider from waiving the right of subrogation prior to a loss. Service provider shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

**D. DEDUCTIBLE**

Any deductible or self-insured retention must be approved in writing by the Village and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

**E. FAILURE TO MAINTAIN COVERAGE**

The service provider agrees to suspend and cease all operations hereunder during such

period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the Village. The Village shall have the right to withhold any payment due the service provider until compliance with the insurance provisions of this agreement are satisfied.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Bidder. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Village's Risk Management Division.

**NOTE: VILLAGE OF MIAMI SHORES VILLAGE CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Bidder of this liability and obligation under this section or under any other section in the Agreement.

**1.44 PERFORMANCE AND PAYMENT BOND:**

If a performance bond is required in Special Conditions, the Contractor shall within ten (10) working days after notification of award.

**1.45 VILLAGE WEBSITE**

The Village utilizes the following procedures for notification of bid opportunities:  
<https://www.miamishoresvillage.com/department/businesses/bids-purchasing>

Miami Shores Village website is the preferred sourcing of notices, addenda, bids and other communications. The Village is not under any obligation and does not guarantee that prospective bidders will receive email notifications concerning the posting, amendment or close of solicitations. Prospective bidders are responsible for checking the Village website for

information and updates concerning solicitations. Unless otherwise noted, bid documents are available at no charge.

It shall be the bidder's responsibility to verify the validity of all bid information received by sources other than those listed.

**1.46 DISCLAIMER**

Miami Shores Village may, in its sole and absolute discretion without prejudice or liability, accept or reject, in whole or in part, for any reason whatsoever any or all bids; re-advertise this ITB; postpone or cancel at any time this ITB process; or waive any formalities of or irregularities in the process. Bids that are not submitted on time and/or do not conform to Miami Shores Village's requirements will not be considered. After all bids are analyzed, Bidder(s) submitting bids that appear, solely in the opinion of Miami Shores Village, to be the most qualified, shall be submitted to Miami Shores Village Council, and the final selection will be made thereafter with a timetable set solely by Miami Shores Village. The selection by Miami Shores Village shall be based on the ITB, which is, in the sole opinion of the Village Council, in the best interest of Miami Shores Village. In all cases Miami Shores Village shall have no liability to any bid for any costs or expense incurred in connection with this ITB.

**1.47 CONFIDENTIALITY**

As a political subdivision, Miami Shores Village is subject to the Florida Government in the Sunshine Act and Public Records Law. By submitting a bid, Bidder acknowledges that the materials submitted with the bid and the results of Miami Shores Village's evaluation are open to public inspection upon proper request. Bidder should take special note of this as it relates to proprietary information that might be included in its bid.

**1.48 NATURE OF THE AGREEMENT**

The Agreement incorporates and includes all negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in the Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of the Agreement that are not contained in the Agreement, and that the Agreement contains the entire agreement

between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning the Agreement shall be of no force or effect, and that the Agreement may be modified, altered, or amended only by a written amendment duly executed by both parties hereto and their authorized representatives.

The Bidder shall provide the services set forth in the Scope of Services and render full and prompt cooperation with the Village in all aspects of the Services performed hereunder.

The Bidder acknowledges that the Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in the Agreement but necessary to carrying out its intent are required by the Agreement, and the Bidder shall perform the same as though they were specifically mentioned, described, and delineated.

The Bidder shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the Village's Contract Manager.

The Bidder acknowledges that the Village shall be responsible for making all policy decisions regarding the Scope of Services. The Bidder agrees to provide input on policy issues in the form of recommendations.

The Bidder agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the Village. The Bidder agrees to act in an expeditious and fiscally sound manner in providing the Village with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **1.49 PAYMENT FOR SERVICES / AMOUNT OBLIGATED**

The Bidder warrants that it has reviewed the

Village's requirements and has asked such questions and conducted such other inquiries as the Bidder deemed necessary in order to determine the price the Bidder will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount submitted on the Bid Form. The Village shall have no obligation to pay the Bidder any additional sum(s) in excess of this amount, except for a change and/or modification to the Contract which is approved and executed in writing by the Village and the Bidder.

All Services undertaken by the Bidder before Village's approval of this Contract shall be at the Bidder's risk and expense.

#### **1.50 BIDS FIRM FOR ACCEPTANCE:**

Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the Village for a period of one hundred twenty (120) days from the date of bid opening unless otherwise stated in the ITB.

#### **1.51 MANNER OF PERFORMANCE**

A. The Bidder shall provide the services described herein in a competent and professional manner satisfactory to the Village in accordance with the terms and conditions of the Agreement. The Village shall be entitled to a satisfactory performance of all services described herein and to full and prompt cooperation by the Bidder in all aspects of the services. At the request of the Village, the Bidder shall promptly remove from the project any Bidder's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Bidder.

B. The Bidder agrees to defend, hold harmless and indemnify the Village and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the Village, occurring on account of, arising from or in connection with the removal and replacement of any Bidder's personnel

performing services hereunder at the behest of the Village. Removal and replacement of any Bidder's personnel as used in this Article shall not require the termination and or demotion of such Bidder's personnel.

- C. The Bidder agrees that at all times it will employ, maintain and assign to the performance of the services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Bidder agrees to adjust its personnel staffing levels or to replace any of its personnel upon reasonable request from the Village, should the Village make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- D. The Bidder warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character, and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- E. The Bidder shall at all times cooperate with the Village and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

The Bidder shall comply with all provisions of all Federal, State, and local laws, Statutes, Ordinances, and regulations that are applicable to the performance of the Agreement.

#### 1.52 **INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under the Agreement, an independent contractor, and not an employee, agent or servant of the Village. All persons engaged in any of the work or services performed pursuant to the Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship

of its employees to the Village shall be that of an independent contractor and not as employees and agents of the Village.

The Contractor does not have the power or authority to bind the Village in any promise, agreement or representation other than specifically provided for in the Agreement.

#### 1.53 **AUTHORITY OF THE VILLAGE'S PROJECT MANAGER**

- A. The Contractor hereby acknowledges that the Village's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, the Agreement including but not limited to: questions as to the value, acceptability and fitness of the services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- B. The Contractor shall be bound by all determinations or orders and shall promptly comply with and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- C. The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in the section below. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
  - a. In the event of such dispute, the parties to the Agreement authorize the Village Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting



personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the Village Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the Village Manager within 10 days of the occurrence, event or act out of which the dispute arises.

- b. The Village Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any deliverable meets the requirements of the Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the Village Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement.
- c. All such disputes shall be submitted in writing by the Contractor to the Village Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. The parties agree that whenever the Village Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be deemed fair and impartial when exercised or taken.
- d. The Village Manager shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor and the Village reserve the right to

pursue any remedies available under law after exhausting the provisions of this Article.

#### 1.54 **MUTUAL OBLIGATIONS**

The Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

Nothing in the Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

In those situations, where the Agreement imposes an indemnity or defense obligation on the Contractor, the Village may, at its expense, elect to participate in the defense if the Village should so choose. Furthermore, the Village may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs and attorney's fees from the Contractor.

#### 1.55 **QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers shall retain such records, and all other documents relevant to the Services furnished under the Agreement for a period of five (5) years from the expiration date of the Agreement and any extension thereof.

#### 1.56 **SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Bid, the Contractor must notify the Village in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

**1.57 ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates, and explanations presented by the Village were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates, and explanations represent predictions of future events, the Village makes no representations or guarantees, the Village shall not be responsible for the accuracy of the assumptions presented, the Village shall not be responsible for conclusions to be drawn there from, and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risks associated with using this information.

**1.58 SEVERABILITY**

If the Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting such provision.

**1.59 TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- A. The Village may terminate the Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the Village through fraud, misrepresentation, or material misstatement.
- B. The Village may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the Village. Such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- C. Contractor acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by the Village, the receipt and adequacy of which is hereby acknowledged by Contractor is given specific consideration to Contractor for Village's right to terminate this Agreement for convenience.

- D. The Village, through its Village Manager, and for its convenience and without cause, terminate the Contract at any time during the term by giving written notice to consultant of such termination, which shall become effective within fifteen (15) days following receipt by the Contractor of such notice. If the Contract is terminated for convenience by the Village, the Contractor shall be paid for any services satisfactorily performed up to the date of termination; following which the Village shall be discharged from any and all liabilities, duties, and terms arising out, or by virtue of, this Contract.
- E. The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the Village through fraud, misrepresentation or material misstatement may be debarred from Village contracting in accordance with the Village debarment procedures. The Contractor may be subject to debarment for failure to perform.

In addition to cancellation or termination as otherwise provided in the Agreement, the Village may at any time, in its sole discretion, with or without cause, terminate the Agreement by written notice to the Contractor and in such event:

- F. The Contractor shall, upon receipt of such notice, unless otherwise directed by the Village:
  - 1. Stop work on the date specified in the notice ("the Effective Termination Date").
  - 2. Take such action as may be necessary for the protection and preservation of the Village's materials and property.
  - 3. Cancel orders.
  - 4. Assign to the Village and deliver to any location designated by the Village any non-cancelable orders for deliverables that are not capable of use except in the performance of the Agreement and which have been specifically developed for the sole purpose of the Agreement and not incorporated in the Services.
  - 5. Take no action which will increase the amounts payable by the Village under the Agreement.

G. In the event that the Village exercises its right to terminate the Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:

1. Portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
2. Non-cancelable deliverables that are not capable of use except in the performance of the Agreement and which have been specifically developed for the sole purpose of the Agreement but not incorporated in the Services.

H. All compensation pursuant to this Article is subject to audit.

#### 1.60 **EVENT OF DEFAULT**

A. An Event of Default shall mean a breach of the Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

1. The Contractor has not delivered deliverables on a timely basis.
2. The Contractor has refused or failed, except in any case for which an extension of time is provided, to supply enough properly skilled staff personnel.
3. The Contractor has failed to make prompt payment to subcontractors or suppliers for any Services.
4. The Contractor has become insolvent (other than as interdicted by the bankruptcy laws) or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver.
5. The Contractor has failed to obtain the approval of the Village where required by the Agreement.

6. The Contractor has failed to provide "adequate assurances" as required under subsection "B" below; and

7. The Contractor has failed in the representation of any warranties stated herein.

B. When, in the opinion of the Village, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the Village may request that the Contractor, within the time frame set forth in the Village's request, provide adequate assurances to the Village, in writing, of the Contractor's ability to perform in accordance with terms of the Agreement. Until the Village receives such assurances the Village may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the Village the requested assurances within the prescribed time frame, the Village may:

1. Treat such failure as a repudiation of the Agreement.
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

C. In the event the Village shall terminate the Agreement for default, the Village or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### 1.61 **REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- A. Lost revenues.
- B. The difference between the cost associated with procuring Services hereunder and the amount actually expended by the Village for

procurement of Services, including procurement and administrative costs; and,

C. Such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The Village may also bring any suit or proceeding for specific performance or for an injunction.

#### 1.62 PROPRIETARY RIGHTS

- A. The Bidder hereby acknowledges and agrees that the Village retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the Village to the Bidder hereunder or furnished by the Bidder to the Village and/or created by the Bidder for delivery to the Village, even if unfinished or in process, as a result of the Services the respondent performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Bidder as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Bidder shall not, without the prior written consent of the Village, use such documentation on any other project in which the Bidder or its employees, agents, subcontractors, or suppliers are or may become engaged. Submission or distribution by the Bidder to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the Village's copyrights or other proprietary rights.
- B. All rights, title, and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Bidder and its subcontractors specifically for the Village, hereinafter referred to as "Developed Works" shall become the property of the Village.
- C. Accordingly, neither the Bidder nor its employees, agents, subcontractors, or suppliers shall have any proprietary

interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of the Bidder, or any employee, agent, subcontractor, or supplier thereof, without the prior written consent of the Village, except as required for the Bidder's performance hereunder.

#### 1.63 LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Bidder agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and Village orders, statutes, ordinances, rules and regulations which may pertain to the Services required under the Agreement, including but not limited to:

- A. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- B. Occupational Safety and Health Act (OSHA) as applicable to this contract.
- C. Environmental Protection Agency (EPA), as applicable to this Contract.
- D. Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability, or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the Work setting forth the provisions of the nondiscrimination law.
- E. "Conflicts of Interest" Section 2-11 of the Miami-Dade County Code,
- F. Florida Building Code (FBC).

- G. Notwithstanding any other provision of the Agreement, Contractor shall not be required pursuant to the Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including, but not limited to, laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### 1.64 NONDISCRIMINATION

During the performance of this Contract, Bidder agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age, or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not be limited to, recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the job training. By entering into this Contract with the Village, the Bidder attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts). If the Bidder or any owner, subsidiary or other firm affiliated with or related to the Bidder is found by the responsible enforcement agency or the Village to be in violation of the Act, such violation shall render this Contract void. This Contract shall be void if the Bidder submits a false affidavit or the Contractor violates the Act during the term of this Contract, even if the Bidder was not in violation at the time it submitted its affidavit.

#### 1.65 CONFLICT OF INTEREST

The Bidder represents that:

- A. No officer, director, employee, agent, or other consultant of the Village or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the grant of the Agreement.
- B. There are no undisclosed persons or entities interested with the Bidder in the Agreement.

The Agreement is entered into by the Bidder without any connection with any other entity or person making a bid for the same purpose, and without collusion, fraud, or conflict of interest. No elected or appointed officer or official, director, employee, agent, or other consultant of the Village, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or member of the immediate family or household of any of the aforesaid:

1. Is interested on behalf of or through the Bidder directly or indirectly in any manner whatsoever in the execution or the performance of the Agreement, or in the services, supplies or work, to which the Agreement relates or in any portion of the revenues; or
  2. Is an employee, agent, advisor, or consultant to the Contractor or to the best of the Bidder's knowledge, any subcontractor or supplier to the Bidder.
- C. Neither the Bidder nor any officer, director, employee, agent, parent, subsidiary, or affiliate of the Bidder shall have an interest which is in conflict with the Bidder's faithful performance of its obligations under the Agreement; provided that the Village Attorney, in its sole discretion, may consent in writing to such a relationship, and provided the Bidder provides the Village with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the Village's best interest to consent to such relationship.
  - D. The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under the Agreement and those provided by statute, the stricter standard shall apply.
  - E. In the event Bidder has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Bidder shall promptly bring such information to the attention of the Village's Attorney.

Bidder shall thereafter cooperate with the Village Attorney's review and investigation of such information and comply with the instructions Bidder receives from the Contract Manager in regard to remedying the situation.

**1.66 PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Bidder, its employees, agents, subcontractors, and suppliers, without the express written consent of the Village:

- A. Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Village, or the Work being performed hereunder, unless the Bidder first obtains the written approval of the Village. Such approval may be withheld if for any reason the Village believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- B. Communicate in any way with any contractor, department, board, agency, Council or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the Village; and
- C. Represent, directly or indirectly, that any product or service provided by the Bidder, or such parties has been approved or endorsed by the Village, except as may be required by law.

**1.67 BANKRUPTCY**

The Village reserves the right to terminate this contract if, during the term of any contract the Bidder has with the Village, the Bidder becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Bidder under federal bankruptcy law or any state insolvency law.

**1.68 GOVERNING LAW/VENUE**

This Contract, including appendices, and all

matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be in Miami-Dade County.

**1.69 SURVIVAL**

The parties acknowledge that any of the obligations in the Agreement will survive the term, termination, and cancellation hereof. Accordingly, the respective obligations of the Bidder and the Village under the Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation, or expiration hereof.

**1.70 VERBAL INSTRUCTIONS PROCEDURE**

No negotiations, decisions, or actions shall be initiated or executed by the Bidder as a result of any discussions with any Village employee. Only those communications which are in writing from an authorized Village representative may be considered. Only written communications from Bidder, which are assigned by a person designated as authorized to bind the Bidder, will be recognized by the Village as duly authorized expressions on behalf of Bidder.

**1.71 PROHIBITION OF INTEREST**

No contract will be awarded to a proposing firm who has Village elected officials, officers or employees affiliated with it, unless the proposing firm has fully complied with current Florida State Statutes and Village Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder or termination of the agreement, removal of the Bidder from the Village's Bidder lists, and prohibition from engaging in any business with the Village.

**1.72 NO CONTINGENT FEES**

Vendor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Vendor to solicit or secure the Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from

the award or making of the Agreement. For the breach or infraction of this provision, the Village shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**1.73 E-VERIFY**

Any Contractor/Consultant assigned to perform responsibilities under its contract with a State agency is required to utilize the US Department of Homeland Security's E-Verify system (per Executive Order Number 11-02) to verify the employment eligibility of: (a) all persons employed during the contract term by the Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the contract with the State agency.

**1.74 FORCE MAJEURE**

The Agreement which is awarded to the successful Bidder may provide that the performance of any act by the Village or Bidder hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the Village shall have the right to provide substitute service from third parties or Village forces and in such event the Village shall withhold payment due Bidder for such period of time. If the condition of force majeure exceeds a period of 14 days the Village may, at its option and discretion, cancel or renegotiate the Agreement.

**1.75 BUDGETARY CONSTRAINTS**

In the event the Village is required to reduce contract costs due to budgetary constraints, all services specified in this document may be subject to a permanent or temporary reduction in budget. In such an event, the total cost for the affected service shall be reduced as required. The Bidder shall also be provided with a minimum 30-day notice prior to any such reduction in budget.

**1.76 SOVEREIGN IMMUNITY**

Nothing in the Agreement shall be interpreted or

construed to mean that the Village waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statute.

**1.77 SCRUTINIZED COMPANIES PURSUANT TO SECTION 287.135 AND 215.473**

As a condition precedent to the effectiveness of this Agreement, subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary*, Florida Department of Transportation, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. As a condition precedent to any contract for goods or services of any amount and as a condition precedent to the renewal of any contract for goods or services of any amount, the Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), and that it is not engaged in a boycott of Israel. The Village may terminate this Agreement at the Village's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, or is engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2020), as may be amended or revised.

**1.78 SPECIAL CONDITIONS:**

Any and all Special Conditions contained in this ITB that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions

shall prevail in their entirety.

## **END OF SECTION**

## **SECTION 2.0 SPECIAL CONDITIONS**

### **2.1 COMPETENCY OF BIDDERS**

Bids shall be considered only from firms that have been continuously engaged in providing products and services similar to those specified herein for a reasonable period and that are presently engaged in the provision of these services. Contract(s) will be awarded only to responsible and responsive Bidder(s) qualified by experience to do the work specified.

The Bidder shall submit, prior to award of Contract, satisfactory evidence of his experience in like work and that he is fully prepared with the necessary organization, capital, and personnel to complete the Scope of Services. Bidder shall be insured, licensed and certified by all applicable local, county, and state agencies.

### **2.2 PERFORMANCE OF SERVICES**

Bidder agrees to perform services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations, and permits. Only the highest quality services shall be acceptable. Services, equipment and workmanship not conforming to the intent of the Agreement or meeting the approval of the Village may be rejected.

### **2.3 CONTRACT TERM**

This contract shall commence upon the effective date of the duly executed Agreement, and shall remain in effect until such time as the commodities, equipment and/or services acquired in conjunction with this Invitation to Bid, have been delivered and completed and accepted by the Village's authorized representative and upon completion of the expressed and/or implied warranty periods. Bidding firms shall provide timelines within their bid packages outlining investment, project and revenue milestones as applicable.

### **2.4 PRICING**

Pricing shall be all-inclusive. Successful bidders shall include in their pricing all the labor specified,

performed according to the provisions of the contract, supplying all materials, supplies, permits and any other necessary services to complete the work. All material, workmanship,

and equipment shall be subject to the inspection and approval of the Village's Project Manager.

### **2.5 REQUESTS FOR INFORMATION**

Questions of a material nature must be received prior to the cut-off date specified in the solicitation. Material changes, if any, to the scope of services or bidding procedures will only be transmitted by written addendum. Please note: No variation in price or conditions shall be permitted based upon a claim of ignorance. Submission of a bid will be considered evidence that the Bidder has familiarized themselves with the nature and extent of the work, and the equipment, materials, and labor required. The entire bid response must be submitted in accordance with all specifications contained in this solicitation. The questions and answers submitted shall become part of any contract that is created from this ITB.

### **2.6 VARIATIONS, CONTRADICTIONS AND SUBSTITUTIONS**

Any variations from ITB specifications, no matter how slight, including substitutions of products or methods, must be noted and explained fully in a submittal with bid entitled "Exceptions to Specifications". If no exceptions are noted, it shall be understood that the plans and specifications will be adhered to exactly.

Where an "or equal" is specified, the Village shall be the sole judge in determining equality. Any deviation from these specifications and/or changes during construction must be approved by the Village in writing. If specifications are in contradiction, or if they contain any errors or omissions, bidders shall notify the Procurement Division in writing at least ten (10) working days before the Solicitation opening, or at the pre-Bid conference, to allow sufficient time to resolve all discrepancies.

### **2.7 PROTECTION OF PROPERTY**

The Bidder shall take extra precaution to protect all property while conducting services. Any damage



done by the Bidder shall be corrected to its original or better state, and shall be corrected to the satisfaction of the Project Manager or designee.

## **2.8 BIDDER'S REPRESENTATIONS**

Bidder must familiarize itself with the nature and extent of the Solicitation Documents, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the services.

Bidder must give Project Manager written notice of all conflicts, errors or discrepancies that he has discovered in the Solicitation Documents and the written resolution thereof by Project Manager is acceptable to Bidder.

## **2.9 PERSONNEL**

Bidder's personnel shall carry photo identification, commercial driver's license, and show same to Village personnel at any time upon request. The Village reserves the right to request the same of Subcontractors.

## **2.11 REQUIRED LICENSES / CERTIFICATIONS**

Bidder must be properly registered to practice their profession and licensed to engage in contracting in the State of Florida at the time of Bid Submission. Contractor must have proper licensing and be able to provide evidence of the same, if requested at the time of award.

## **2.12 PERFORMANCE AND PAYMENT BOND**

Within ten (10) days of the award of contract, the Bidder shall provide the following surety bonds, each in the amount of one hundred percent (100%) of the contract price, and issued by a properly licensed surety company, listed in the current issue of the Federal Register published by the Department of the Treasury, acceptable to Miami Shores Village. The bonds should provide that the surety's liability will be co-extensive with the Bidder's liability, and should contain a provision that the surety waives notice of changes to the contract, including, but not limited to, changes in the times for performance.

- a) A Performance and One-Year Warranty Bond covering the faithful performance of

the contract and a one-year warranty on labor and materials from the date of final acceptance of the work.

- b) A Labor and Material Payment Bond.

## **2.13 PRE-CONSTRUCTION MEETING**

Soon after Bidder has been notified of award of RFP, Bidder, and Village shall agree upon a date and time for a pre-construction meeting. The Bidder shall have in attendance a principal of the firm or the project manager. Depending on the scope of the project, the additional stakeholders may be requested to attend.

The following matters (if applicable), at a minimum, shall be discussed and presented at this meeting:

- a) Signed contract
- b) Certificates of Insurance
- c) Performance and Payment Bonds
- d) Project Managers
- e) Notice to Proceed
- f) Shop drawings
- g) Material deliveries
- h) Village scheduled events affecting involved facility/site
- i) Material samples for selection by Village of style, color, etc.

## **2.14 MATERIALS, INSPECTION, AND RESPONSIBILITY**

The Village shall have a right to inspect any material to be used in carrying out this contract. The Village does not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this contract. The Bidder shall be responsible for the contract quality and standards of all materials, components or completed work finished under this contract for 12 months from the date of final approved inspection and acceptance. Materials, components, or completed work not complying therewith may be rejected by the Village and shall be replaced by the Bidder at no cost to the Village. Any materials or components rejected shall be removed within a reasonable time from the premises at the entire expense of the Bidder, after written notice has been mailed by the Village to the Bidder that such materials or components for work have been rejected.

## **2.15 NOTICE TO PROCEED**

The date of commencement of construction will be established during the Pre-Construction Conference, which shall be held shortly after the award of contract, and will be stated in the Notice to Proceed.

## **2.16 SUBSTANTIAL COMPLETION**

For the purpose of this project, Substantial Completion shall be defined as that point which the Village has occupancy and/or use of the facility under construction, including equipment and systems installed.

## **2.17 FINAL COMPLETION**

For the purpose of this project, Final Completion shall be defined at that point after which the Director of Public Utilities or his representative, the Village's Building Official, and the using Department have made and approved the Final Inspection and the Punch List has been completed, and all deliverable have been provided to the Village.

## **2.18 SUPERVISION**

The Bidder is to be responsible for his employees and Subcontractors, and for compliance with all laws and ordinances governing his work. He shall be responsible for the accuracy of the laying out and giving his personal superintendence to the work. He shall have at all times a competent representative available to answer questions or handle problems, who shall be satisfactory to the Village. He shall at all times take proper precautions to protect his work and materials from damage and disfigurement until accepted.

## **2.19 PERMITS**

The Bidder shall obtain all permits and call for inspections required for this project. The Building Dept. is mandated to charge fees. The Bidder shall be responsible for the payment of the following fees including but not limited to: State BPR Building Certification Fee, State DCA Surcharge, County Code Compliance Fee, Microfilm Fee, and Structural Examination Fee. Fees for re-inspections shall be charged to the Bidder at normal rate and all costs shall be borne by the Bidder. The Bidder shall obtain all required permits to do the job. Bidder shall present the Village with proof of payment for said permit fees.

## **2.20 PROTECTION OF PROPERTY**

The Bidder shall take extra precaution to protect all property while removing and replacing materials and equipment. Any damage done by the Bidder, whether it is necessary to the installation or accidental, shall be corrected to its original or better state, and shall be corrected to the satisfaction of the Director of the Department of Public Utilities.

## **2.21 WARRANTY**

All materials and workmanship must be warranted for a minimum period of one year from the date of final acceptance. Equipment or systems carrying more than a one year warranty shall be enumerated on the Bid Proposal form.

## **2.22 FINAL ACCEPTANCE**

The Final Inspection shall be made only after the Village is satisfied that the work described in the plans and specifications has been completed in accordance with the intent of these specifications. The acceptance of the work shall not in any way prejudice the Village's rights to demand replacement of defective materials and workmanship.

## **2.23 SAFETY**

Bidder shall provide and place safety barriers and signage to modify and direct circulation at and around construction site. Every effort shall be made to minimize and limit construction noise, dirt, and dust.

## **2.24 ASBESTOS**

No asbestos containing materials have been designed into this project, nor have been specified. Bidder shall use no asbestos-containing materials in the execution of the work covered by these specifications.

## **2.25 MANUALS**

Bidder shall provide two (2) manufacturers' training and maintenance manuals for any equipment installed.

## **2.26 CHANGE ORDERS**

Each Change Order to the Contract must be supported in writing and signed by the Bidder and

the Village. Without this prior written authorization, the Village will not pay for extra work performed. The amount of Bidder's overhead and profit allowed for any change order, whether increase or decrease, shall not exceed the following limits for work by the Bidder:

Overhead Limit: 10% of direct cost;  
 Profit Limit: 5% of the sum of direct cost and overhead cost.

For any portion of the work for a change order that is performed by a Subcontractors or a Sub Bidder, Bidder's combined overhead and profit limits allowed will not exceed 5% of the actual direct cost of the work. The A/E of Record will verify the Change Orders compliance, the determination of the final completion status, and the reception of all due related documents, including his/her approval of the updated record drawings, etc.

**2.27 CLEAN UP**

Bidder shall remove and dispose of any dirt or debris resulting from this project. All debris shall be disposed of at an authorized dumping facility. Dump tickets shall be submitted to the Village with each pay request.

Exposed metal shall be polished, glass shall be cleaned, surrounding structures or landscaping affected or damaged during completion of this project shall be restored to an equal or better condition. Paint shall be touched up if and where needed. Bidder's equipment and surplus material shall be removed from site.

**2.28 ARCHITECT/ENGINEER OF RECORD**

The A/E of Record will verify the Change Orders compliance, the determination of the final completion status, and the reception of all due related documents, including his/her approval of the updated record drawings, approval of all NOA compliances, etc.

**2.29 CONTRACT TIME / LIQUIDATED DAMAGES**

Upon failure of the Contractor to complete the Work within the time specified for completion, the Contractor shall pay to the Village for each and every calendar day that the completion of the Work is delayed beyond the time specified in this Agreement for completion, as fixed and agreed

liquidated damages and not as a penalty, so long as the delay is caused by the Contractor.

Amount of Liquidated Damages: Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge
Per Calendar Day	
\$299,999 and under .....	\$904
\$300,000 but less than \$2,000,000 .....	\$1,685
\$2,000,000 but less than \$5,000,000 .....	\$2,667
\$5,000,000 but less than \$10,000,000 .....	\$3,813
\$10,000,000 but less than \$20,000,000 .....	\$5,021
\$20,000,000 but less than \$40,000,000 .....	\$7,442
\$40,000,000 and over \$10,224 plus 0.00005 of any amount over \$40 million (Round to nearest whole dollar)	

Should an act of God or the acts or omissions of the Village, its agents or representatives, in derogation to the terms of this Agreement cause the delay, the Contractor shall not be responsible for the delay nor liquidated damages. Liquidated damages are fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the Village as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of damages and the cost and effect of the failure of the Contractor to complete the Work on time. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. The Village shall have the right to deduct from or retain any compensation which may be due or which may become due and payable to the Contractor the amount of liquidated damages, and if the amount retained by the Village is insufficient to pay in full such liquidated damages, the Contractor shall pay all liquidated damages in full. The Contractor shall be responsible for reimbursing the Village, in addition to liquidated damages or other damages for delay, for all costs of engineering, architectural fees, and inspection and other costs incurred in administering the construction of the Project beyond the completion date specified or beyond an approved extension of time granted to the Contractor whichever is later. Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the Contractor shall not give rise to a claim by Contractor for damages for increase in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the

Village's contractors and subcontractors, Florida Power and Light Company, AT&T, and Florida East Coast Railway, LLC.

### **2.30 AS-BUILT DRAWINGS**

A set of drawings, which depicts the actual as-built conditions of the completed construction, provides the user with a permanent record of each project feature. These working as-built drawings will typically be red lined mark ups of the Construction plans. The working As-built drawings must be reviewed at least periodically by the Village's Project Manager in conjunction with the approval of progress payments. The contract requires the Bidder to prepare, maintain and deliver to the Village a set of redlined, record drawings, which show the actual as-built conditions of the construction phases.

### **2.31 BIDDER'S WORK AND STAGING AREA**

a) As applicable, the Bidder shall use only site areas designated by the Village as Bidder Staging area for the project. The Bidder shall keep this area in a secure, clean and orderly condition, and shall be responsible for screening and fencing the area so as not to cause a nuisance or sight obstruction to motorists or pedestrians.

b) Responsibility for protection and safekeeping of equipment and materials at or near the sites will be solely that of the Bidder and no claim shall be made against the Village.

c) Upon completion of the Contract, the Bidder shall remove from the storage areas all of their equipment, temporary fencing, surplus materials, rubbish, etc., and restore the areas to their original condition.

d) Bidder's insurance shall extend coverage to all designated storage areas.

### **2.32 BID SECURITY**

A certified check, cashier's check, bank officer's check or bid bond for FIVE percent (5%) of the bid amount, made payable to the Miami Shores Village, Miami Shores Florida, shall accompany each bid.

### **2.33 LOCAL, STATE, AND FEDERAL**

## **COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and Village orders, statutes, ordinances, rules and regulations which may pertain to the Services required under the Agreement, including but not limited to:

### **A. STATE OF FLORIDA E-VERIFY**

Contractor acknowledges that the Village may be utilizing the Contractor's services for a project that is funded in whole or in part by State funds pursuant to a contract between the Village and a State agency. Contractor shall be responsible for complying with the E-Verify requirements in the contract and using the U.S. Department of Homeland Security's E-Verify system (per the State of Florida Executive Order Number 11-02 "Verification of Employment Status") to verify the employment eligibility of: (a) all persons employed during the contract term by the Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the contract, during the Agreement term. The Contractors also responsible reporting to the Village any required information to the Village. Contractor acknowledges that the terms of this paragraph are material terms, the breach of any of which shall constitute a default under the Agreement.

### **B. ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL**

The Contractor shall allow access by the grantee, sub grantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

### **C. FEDERAL CLEAN AIR AND WATER ACTS**

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

#### **D. CONTRACT WORK HOURS AND SAFETY STANDARDS**

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702-3704) as supplemented by Department of Labor regulations (29 CFR Part 5).

#### **E. COMPLIANCE WITH THE COPELAND ANTI-KICKBACK ACT**

(1) Contractor:

The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts:

The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA 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 of these contract clauses. (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **G. SUSPENSION AND DEBARMENT**

Non-federal entities are subject to the non procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These

regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

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

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

#### **H. ANTI-LOBBYING Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or

employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation

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

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

#### **I. EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by any authority having jurisdiction over the Work setting forth the provisions of the nondiscrimination law.

#### **2.34 DAVIS BACON PREVAILING / MINIMUM WAGE**

Federal Davis-Bacon Wage Rates for work classifications are specified and must be complied with Fringe benefits must be added to the prevailing hourly rates where applicable. Current Wage tables may be obtained at: <https://sam.gov/wage->

## 2.35 RESTRICTIONS

The following items are not allowed on this project:

- Contractor shall not Purchase Equipment for State or Local Ownership as reference in section 23 CFR 140, 49 CFR Part 18 and 49 CFR Section 18.3 of the FHWA Code of Federal Regulations.
- Owner Force Account Contracting shall not be allowed on this project as referenced in section 23 CFR 6358 under 635.205 of the FHWA Code of Federal Regulations
- No Federal funds shall participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for this project. Only exceptions being the Irrigation system.
- No public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors as reference in section 23 CFR 635.112(e) of the FHWA Code of Federal Regulations
- Publicly owned equipment shall not compete with privately owned equipment on this project as reference in section 23 CFR 635.106 of the FHWA Code of Federal Regulations.
- Salvage Credits as a result of salvaged materials or equipment.
- No requirement shall be imposed, and no procedure shall be enforced by the State of Florida Department of Transportation in connection with this project which may operate:
  - (a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or

(b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

- Contracts for this project shall require the contractor to furnish all materials to be incorporated in the work and permit the contractor to select the sources from which the materials are to be obtained as referenced in section 23 CFR 635.407 of the FHWA Code of Federal Regulations.

2.36 Current Capacity Rating: Per Florida Administrative Code 14-22, the Contractor shall certify they have the financial capacity to complete the project. The Contractor shall complete FDOT Form 525-010-46, LAP Certification of Current Capacity, as seen on Attachment A-1. This Form shall be submitted with the Bid Package.

2.37 Prohibition Against Considering Social, Political Or Ideological Interests In Government Contracting -- F.S. 287.05701: Bidders are hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the Village will not request documentation of or consider a Bidder's social, political, or ideological interests when determining if the Bidder is a responsible Bidder. Bidders are further notified that the Village's governing body may not give preference to a Bidder based on the Bidder's social, political, or ideological interests.

**END OF SECTION**

## SECTION 3.0 SPECIFICATIONS

### 3.1 PURPOSE AND INTENT

Miami Shores Village (“Village”) is seeking bids from contractors (hereinafter referred to as the “Contractor”), to submit bids for the construction of multimodal mobility improvements for Multimodal Mobility Improvements along N Miami Avenue from NE 91st Street to NE 111th Street.

A portion of the project will be funded by the Florida Department of Transportation (FDOT) Local Agency Program (LAP). **Prior to award the prime contractor must be prequalified by Florida Department of Transportation (FDOT) in the following work class: 10. Flexible Paving. The prime contractor or subcontractor must be prequalified in work classes: 10. Flexible Paving and 28. Pavement Markings.**

The pre-qualification process for FDOT can be located at the following link: <https://www.fdot.gov/contracts/prequal-info/prequalified.shtm>

This work shall be in accordance with the Florida Department of Transportation (FDOT) Local Agency Program (LAP) and based on plans and specifications of the bid documents. The Contract period is estimated at one hundred fifty (150) calendar days with no option for renewal.

- 3.1.1 The project was identified in the Miami Shores Village Multimodal Mobility Study provides enhanced safety and mobility for pedestrians and bicyclists by implementing neighborhood greenways, shared lane markings, high-emphasis textured intersections, and bicycle and pedestrian crossing improvements to better connect the east side of Miami Shores with the central part of the Village. Shared lane markings and signage are proposed on NE 96<sup>th</sup> Street from NE 2<sup>nd</sup> Avenue to NE 12<sup>th</sup> Avenue. As part of the shared lane facility, textured intersections with warning signs and crosswalks will be reconstructed at NE 4<sup>th</sup> Avenue and at NE 5<sup>th</sup> Avenue. Pedestrian and bicycle crossing improvements, including reconstructed pedestrian refuge islands and a bicycle staging area (bike box) are proposed at the intersection of NE 96<sup>th</sup> Street and US 1/Biscayne Boulevard. Green-backed shared lane markings and signage are proposed on neighborhood greenways serving the neighborhood east of NE 12<sup>th</sup> Avenue.

### 3.2 PROJECT LOCATION

The project length is approximately 5.75 miles.

The project begins at:

NE 96th St. and NE 2nd Ave.  
NE 91st Ter. and NE 10th Ave.  
NE 92nd St. and NE 12th Ave.  
NE 93rd St. and NE 12th Ave.  
NE 94th St. and NE 12th Ave.  
NE 96th St. and NE 12th Ave.  
NE 97th St. and NE 12th Ave.  
NE 101st St. and NE 12th Ave.

The project ends at:

NE 96th St. and NE 12th Ave.  
NE 91st Ter. and N. Bayshore Dr.  
NE 92nd St. and N Bayshore Dr.  
NE 93rd St. and N Bayshore Dr.  
NE 94th St. and N. Bayshore Dr.  
NE 96th St. and N Bayshore Dr.  
NE 97th St. and NE 13th Ave.  
NE 101st St. and NE 102nd St.



NE 102nd St. and NE 12th Ave.  
NE 103rd St. and NE 12th Ave.  
NE 104th St. and NE 12th Ave.  
NE 10th Court and NE 92nd St.  
NE 12th Ave. and NE 92nd Ave.  
NE 13th Ave. and NE 97th St.  
NE 13th Ave. and NE 101st St.  
N. Bayshore Dr. and NE 91st Ter.  
N. Bayshore Dr. and NE 94th St.

NE 102nd St. and NE 101st St.  
NE 103rd St. east of NE 12th Ave.  
NE 104h St. east of NE 12th Ave.  
NE 10th Court ad NE 94th St.  
NE 12th Ave. and NE 104h St.  
NE 13th Ave. and NE 100th St.  
NE 13th Ave. and NE 103rd St.  
N Bayshore Dr. north of NE 93rd St.  
N. Bayshore Dr. north of NE 96th St.

### **3.3 BACKGROUND**

In 2015, Village of Miami Shores conducted a Multimodal Mobility Study with the primary goal to increase bicycle and pedestrian mobility and safety within the Village. Safe, convenient, and accessible series of pedestrian and bicycle facilities were planned through this study that will connect local neighborhoods, provide access to downtown Miami Shores, and allow residents the opportunity to enjoy active transportation while gaining the health and social benefits that bicycling and walking has to offer.

### **3.4 SCOPE OF SERVICES**

- 3.4.1 The project involves the construction in accordance with the plans and specifications for this project, as specified in link: <https://cloud.msvfl.gov/s/pGDPcSK2QC37Z8o>
- 3.4.2 The work to be performed shall consist of furnishing all equipment, materials, supplies, and manufactured articles and for furnishing all transportation and services and for the performance of all labor, work, or other operations required for the multimodal mobility improvements.
- 3.4.3 The Bidder shall ensure smooth and efficient project planning, staffing, communication updates, and scheduling, through project completion, as required by the scope of services herein contained. Bidders shall include in their offer all required project labor, machinery, rentals, tools, travel, transportation, delivery, materials, equipment, supplies, permits, and related incidentals necessary to meet, in its entirety, the ITB requirements specified herein.
- 3.4.4 Bidder shall be responsible for ensuring it is in possession of all required permits prior to commencement of work, and maintaining permits throughout the contract award, as required. All costs associated with obtaining required permits shall be the responsibility of the awarded Bidder(s). The review of the plans required for approval as contained within the solicitation have been reviewed and approved by Miami-Dade County.

### **3.5 QUALIFICATIONS AND EXPERIENCE INCLUDING KEY PERSONNEL**

- 3.5.2 Contractor shall be a properly licensed contractor under existing Federal, State and Local laws, and qualified to perform the job as contained in this scope of work. The awarded contractor shall have a valid State of Florida license that enables them to procure all required permits, complete all of the work as specified herein and required by law.

- 3.5.3 Each Bidder shall complete the applicable Forms included in the Proposal and shall submit with its Bid written evidence as to his financial status, previous successful contractual and technical experience in similar work including references, description and volume of present commitments, evidence of possession of valid state, county and local licenses and Certificates of Competency covering all operations and all areas of political jurisdiction involved in the work of this project and such other data as may be requested by the Village.
- 3.5.4 Only one Proposal from an individual firm, partnership or corporation under the same or under different names will be considered. If it is believed that a Bidder is interested in more than one Proposal for the work involved, all Proposals in which such a Bidder is interested will be rejected.

### **3.6 SPECIFICATIONS:**

- 3.6.1 The project involves the construction in accordance with the plans and specifications for this project, as specified in the plans, FOT Section 701 specifications “Profiled Thermoplastic Pavement Markings” and FDOT LAP DIVISION 1 Construction Checklist Specifications from Department of Transportation Standard for Road and Bridge Construction Revised 3/26/24.
- 3.6.2 The standards are in accordance with FDOT Manual of Uniform Minimum Standards (Florida Green Book) for Design.

### **3.7 EQUIPMENT:**

- 3.7.1 Contractor’s Equipment: All contractor’s vehicles and equipment must be maintained in good repair, appearance and sanitary condition at all times. Owned vehicles must be clearly identified with the name of the company and phone number clearly visible. In addition, the contractor will be responsible for using the necessary safety equipment according to State standards while working on Village, County, or State roads as a sub-contractor of the Village.

### **3.8 PRE-CONSTRUCTION MEETING**

The awarded Contractor shall schedule a preconstruction meeting and site visit with Village staff prior to any work being performed. The date, time, and location shall be mutually agreed upon by the Village and the Contractor.

### **3.9 PERFORMANCE SCHEDULE**

- 3.9.1 The Contractor shall commence performance within fourteen (10) days of receipt of Notice to Proceed.
- 3.9.2 This is a time sensitive project and by responding to this bid, the Contractor understands that all work performed shall be fully complete within one hundred fifty days of receipt of Notice to Proceed.

### **3.10 PROJECT COORDINATION & SCHEDULING**

3.10.1 During the course of work, the Contractor shall be responsible for keeping the Village informed of the proposed work schedule. This includes any scheduled work that could impede operations. The Contractor shall prepare a Construction schedule

to serve as a guide in managing the construction progress.

- 3.10.2 The Contractor shall not put workers on the job or perform any work without prior knowledge that such work is to be done, the place of work, and the scheduled starting time. A minimum 24-hour notification to the Village is required. The Village reserves the right to deny the request without penalty.

### **3.11 HOURS OF WORK**

- 3.11.1 The Contractor shall perform work between the hours 7:30 a.m. and 4:00 p.m., Monday through Saturday, or as restricted by the Village. This project has been approved for one shift installation operations. The working hours and phasing of work shall be worked out with the Project Manager.
- 3.11.2 Contractor will have to be flexible with work scheduling in order to not interfere with normal school operation, to include after hour or weekend work if necessary.

### **3.12 CLEAN UP**

Contractor shall be responsible for the removal of all debris resulting from this project and restoration to any existing areas damaged by the contractor once the project is completed. All debris shall be disposed of at an authorized dumping facility. Site shall be made safe, and clean of debris at the end of each work day.

### **3.13 WARRANTIES**

Contractor shall at his/her own expense, repair and replace all defective work which is found to be defective for a period of one (1) years from the date of acceptance of work by the Village. The warranty for any work repaired or replaced shall be extended for a period of twelve (12) months from the date of such repair or replacement. This warranty shall not apply to normal wear and tear or damage by acts beyond.

### **3.14 EMPLOYESS AND SUPERINTENDENT**

- 3.14.1 Each employee at all times shall have and display in plain view proper identification. The names of the employee and the company shall be displayed on the front of the employee's shirt.
- 3.14.2 The successful contractor shall employ a competent English speaking superintendent who shall be in attendance at the project site during the progress of the work. The superintendent shall be the primary representative for the Contractor and all communications given to and all decisions made by the superintendent shall be binding on the Contractor.
- 3.14.3 The Contractor shall supply competent and physically capable employees and the Village is authorized to require the Contractor to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on Village property is not in the best interest of the Village.

## SECTION 701 PROFILED THERMOPLASTIC PAVEMENT MARKINGS

### 701-1 Description.

Profiled thermoplastic pavement markings consist of thermoplastic material with raised thermoplastic bumps creating a raised profile marking. Apply profiled thermoplastic pavement markings in accordance with the Contract Documents.

### 701-2 Materials.

Use only materials listed on the Department's Approved Product List (APL) as an approved system and meeting the following requirements:

Profiled Thermoplastic.....	971-1 and 971-9
Retroreflective Elements* .....	971-1.7
Glass Spheres* .....	971-1 and 971-2

\*Use retroreflective elements or glass spheres recommended by the manufacturer.

The Engineer will take random samples of the materials in accordance with the Department's Sampling, Testing and Reporting Guide schedule.

### 701-3 Equipment.

Use equipment capable of providing continuous, uniform heating of the pavement marking material to temperatures exceeding 390°F, mixing and agitating the material in the reservoir to provide a homogenous mixture without segregation. Use equipment that will maintain the pavement marking material in a plastic state, in all mixing and conveying parts, including the line dispensing device until applied. Use equipment which is capable of producing a consistent pattern of bumps with a longitudinal distance between bumps of approximately 30 inches center-to-center intervals. Use equipment which meets the following requirements:

1. Capable of traveling at a uniform, predetermined rate of speed, both uphill and downhill, to produce a uniform application of pavement marking material and capable of following straight lines and making normal curves in a true arc.
2. Capable of applying retroreflective elements or glass spheres to the surface of the completed pavement marking by automatic dispensers attached to the pavement marking machine such that the retroreflective elements or glass spheres are dispensed closely behind the installed line. Use retroreflective element or glass sphere dispensers equipped with an automatic cut-off control that is synchronized with the cut-off of the thermoplastic material and applies the retroreflective elements or glass spheres uniformly on the entire pavement marking surface with 50 to 60% embedment.
3. Equipped with a special kettle for uniformly heating and melting the pavement marking material. The kettle must be equipped with an automatic temperature control device and material thermometer for positive temperature control and to prevent overheating or scorching of the thermoplastic material.
4. Meets the requirements of the National Fire Protection Association (NFPA), State and Local authorities.

### 701-4 Application.

**701-4.1 General:** Remove existing thermoplastic pavement markings and raised bumps using a method approved by the Engineer such that pavement surface scars or traces of the

removed thermoplastic pavement markings will not conflict with new pavement markings. Do not use paint to blackout, hide, or disguise existing pavement markings.

Before applying pavement markings, remove any material that would adversely affect the bond of the pavement markings by a method approved by the Engineer.

Before applying pavement markings to any portland cement concrete surface, apply a primer, sealer or surface preparation adhesive of the type recommended by the manufacturer. Offset longitudinal lines at least 2 inches from construction joints of portland cement concrete pavement.

Apply thermoplastic material thickness according to 701-4.2. Application on open graded friction surfaces may require more thermoplastic material to achieve the required thickness above the pavement surface.

Apply pavement markings to dry surfaces only, and when the ambient air and surface temperature is at least 50°F and rising for asphalt surfaces and 60°F and rising for concrete surfaces.

Apply pavement markings to the same tolerances in dimensions and in alignment specified in 710-5. When applying pavement marking over existing markings, ensure that no more than 2 inches on either end and not more than 1 inch on either side of the existing line is visible.

Conduct field tests in accordance with FM 5-541, Part A. Take test readings representative of the pavement marking performance. Remove and replace pavement markings not meeting the requirements of this Section at no additional cost to the Department.

**701-4.2 Thickness:** Apply flat base lines having a minimum thickness of 0.100 inches or 100 mils and not exceeding a thickness of 0.150 inches or 150 mils, exclusive of the bumps, when measured above the pavement surface.

Measure, record and certify on a Department approved form and submit to the Engineer, the thickness of white and yellow pavement markings in accordance with FM 5-541, Part A.

The Engineer will verify the thickness of the pavement markings in accordance with FM 5-541, Part A within 30 days of receipt of the Contractor's certification.

**701-4.3 Dimensions of Raised Bumps:** Apply the raised bumps with a profile such that the leading and trailing edges are sloped at a sufficient angle to create an audible and vibratory warning.

Bumps on edge line and centerline markings shall be at least 0.45 inches at the highest point of the bump, above the pavement surface, including the base line. The height shall be measured after application of drop-on retroreflective elements or glass spheres. Bumps shall have a minimum baseline coverage dimension of 2.5 inches in both transverse and longitudinal directions. The bumps may have a drainage channel, the width of each drainage channel will not exceed 1/4 inch at the bottom of the channel. The longitudinal distance between bumps shall be approximately 30 inches.

**701-4.4 Retroreflectivity:** Apply white and yellow profiled thermoplastic markings that will attain an initial retroreflectance of not less than 300 mcd/m<sup>2</sup>/lx and not less than 250 mcd/m<sup>2</sup>/lx, respectively. Measure, record and certify on a Department approved form and submit to the Engineer, the retroreflectivity of white and yellow pavement markings in accordance with FM 5-541, Part A.

**701-4.5 Color:** Use pavement marking materials that meet the requirements of 971-1.

**701-4.6 Retroreflective Elements or Glass Spheres:** Apply retroreflective elements or drop on glass spheres to all markings as identified on the APL and at the rates determined by the manufacturer's recommendations.

**701-4.7 Loss:** If more than 1% of the bumps or more than three consecutive bumps are missing or broken (less than half a bump remaining) within the first 45 days under traffic, replace all failed bumps at no expense to the Department. If more than 2% of the bumps fail within the first 45 days under traffic, the replacement period will extend an additional 45 days from the date all replacement bumps were installed. If, at the end of the additional 45 days, more than 2% of all bumps (initial and replacement) fail, replace all failed bumps at no expense to the Department. Measure, record and certify on a Department approved form and submit to the Engineer, the loss of bumps.

#### **701-5 Contractor's Responsibility for Notification.**

Notify the Engineer prior to the placement of the materials. At the time of notification, submit a certification to the Engineer with the APL number and the batch or LOT numbers of the thermoplastic materials and retroreflective elements or glass spheres to be used. Packaging labels that contain the information required by 971-1.1 will be accepted in lieu of a certification.

#### **701-6 Protection of Newly Applied Profiled Thermoplastic Markings.**

Do not allow traffic onto or permit vehicles to cross newly applied pavement markings until they are sufficiently dry. Remove and replace any portion of the pavement markings damaged by passing traffic or from any other cause, at no additional cost to the Department.

#### **701-7 Observation Period.**

Longitudinal pavement markings, with the exception of bumps, are subject to a 180 day observation period under normal traffic. The observation period will begin with the satisfactory completion and acceptance of the work. The observation period for bumps will be in accordance with the requirements of 701-4.7.

The longitudinal pavement markings shall show no signs of failure due to blistering, excessive cracking, chipping, discoloration, poor adhesion to the pavement, loss of retroreflectivity or vehicular damage. The retroreflectivity shall meet the initial requirements of 701-4.4. The Department reserves the right to check the retroreflectivity anytime prior to the end of the observation period.

Replace, at no expense to the Department, any longitudinal pavement markings that do not perform satisfactorily under traffic during the 180 day observation period.

#### **701-8 Corrections for Deficiencies.**

Correct all deficiencies by removal and reapplication of a one-mile section centered around the deficiency, at no cost to the Department.

#### **701-9 Method of Measurement.**

**701-9.1 Profiled Thermoplastic Markings:** The quantities of 6 inch solid and 10'-30' skip lines to be paid will be the plan quantity length, in gross miles, subject to 9-1.3.2. The gross mile measurement will be taken as the distance from the beginning of the profiled thermoplastic line to the end of the profiled thermoplastic line and will include the unmarked gaps for skip lines. The gross mile will not include designated unmarked lengths at intersections, turn lanes, etc.

**701-9.2 Removal of Existing Thermoplastic Markings:** The quantity to be paid for removal of existing thermoplastic pavement markings will be the area, in square feet, acceptably removed. Payment for removal of thermoplastic pavement markings will only be made for locations where the existing pavement surface is to remain.

**701-10 Basis of Payment.**

Price and payment will be full compensation for all work specified in this Section, including, all cleaning and preparing of surfaces, furnishing of all materials, application, curing and protection of all items, protection of traffic, furnishing of all tools, machines and equipment, and all incidentals necessary to complete the work. Final payment will be withheld until all deficiencies are corrected.

Payment will be made under:

Item No. 701	Profiled Thermoplastic Pavement Markings.
	Solid - per gross mile
	Skip - per gross mile
	Remove - per square foot

**LAP DIVISION 1 SPECIFICATIONS.**

(REV 3-26-24) (FA 3-29-24) (FY 2024-25)

Construction Checklist Specifications  
from  
Department of Transportation  
Standard Specifications for Road and Bridge Construction

*The following excerpts from the Standard Specifications and Special Provisions are provided for use in LAP Specifications as needed in accordance with the Local Programs Manual (525-010-300) and the Local Agency Program Checklist for Construction Contracts (Phase 58) – Federal and State Requirements (525-070-44)*



## **FROM SECTION 1 – DEFINITIONS AND TERMS:**

**Department Name** \_Miami Shores Village

**Engineer** Kimley-Horn

### **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 Cost Savings Initiative Proposal, 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.

### **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. The Specialty Engineer may also provide designs and details, repair designs and details, or perform Engineering Analyses for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”.

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.

## **FROM SECTION 4 - SCOPE OF THE WORK (ALTERATION OF WORK).**

### **4-3 Alteration of Plans or of Character of Work.**

**4-3.1 General:** The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

The term "significant change" applies only when:

1. The Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or

2. A major item of work, as defined in 1-3, is increased in excess of 125% or decreased below 75% of the original Contract quantity. The Department will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity in accordance with 4-3.2 below. In the case of a decrease below 75% the Department will only apply a price adjustment for the additional costs that are a direct result of the reduction in quantity.

In (1) above, the determination by the Engineer shall be conclusive. If the determination is challenged by the Contractor in any proceeding, the Contractor must establish by clear and convincing proof that the determination by the Engineer was without any reasonable basis.

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely submitted a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data submitted is accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable

adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer’s sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

1. Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor’s actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida’s rate
Insurance*	Actual

Table 4-1	
Item	Rate
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

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

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

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

2. Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

3. Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" as published by EquipmentWatch, a division of Informa Business Media, Inc., 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 "Rental Rate Blue Book."

Allowable Equipment Rates will be established as set out below:

- a. Allowable Hourly Equipment Rate = Monthly Rate/176  
x Adjustment Factors x 100%.
- b. Allowable Hourly Operating Cost = Hourly Operating  
Cost x 100%.
- c. Allowable Rate Per Hour = Allowable Hourly  
Equipment Rate + Allowable Hourly Operating Cost.
- d. Standby Rate = Allowable Hourly Equipment  
Rate x 50%.

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

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

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

4. Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (a) or (b) below:

a. Solely a mark-up of 17.5% on the payments in (1) through (3), above.

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

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

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

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

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the combined total number of calendar days granted as time extensions due to either extra work, excluding overruns to existing contract items, that extend the duration of the project or delay of a controlling work item caused solely by the Department, or the combined total number of calendar days for which

a claim of entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined to be in favor of the Contractor.

No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

Further, for (a) and (b) above, 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.

**4-3.2.2 Subcontracted Work:** Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:

$$D_s = \frac{A_s \times C}{B}$$

Where  $A_s$  = Original Contract Amount minus Original

Subcontract amounts(s)\*

$B$  = Original Contract Time

$C$  = 8%

$D_s$  = Average Overhead Per-Day

\* deduct Original Subcontract Amount(s) of subcontractor(s) performing the work

The subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually submitted and paid for separate bond premiums for such additional or unforeseen work in such amount and that the subcontractor was required by the Contractor to acquire a bond.

The Contractor shall require the subcontractor to submit a certification, in accordance with 4-3.2.1 (1), as part of the cost proposal and submit such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind

the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

**4-3.3 No Waiver of Contract:** Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

**4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:** A Supplemental Agreement or Unilateral Payment will be used to clarify the Plans and Specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in the Plans which could not reasonably have been contemplated or foreseen in the original Plans and Specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

**4-3.5 Extra Work:** Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in 4-3.2 for additional work.

**4-3.6 Connections to Existing Pavement, Drives and Walks:** Generally adhere to the limits of construction at the beginning and end of the project as detailed in the Plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated in the Plans, the Engineer will submit direction regarding the proper connections in accordance with the Standard Plans.

**4-3.7 Differing Site Conditions:** During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify

the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

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

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

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

**4-3.8 Changes Affecting Utilities:** The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

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

**4-3.9 Cost Savings Initiative Proposal:**

**4-3.9.1 Intent and Objective:**

1. This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Proposal) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. A mandatory Cost Savings Initiative Workshop will be held prior to Contract Time beginning for the Contractor and Department to discuss potential Proposals. This mandatory workshop can only be eliminated if agreed to in writing by both the Contractor and Department. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

2. The Department will consider Proposals that would result in net savings to the Department by providing a decrease in the cost of the Contract. Proposals must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a Proposal. Deletions of work, approved by the Engineer, that are the sole objective of the Proposal will include a cost sharing percentage with the Contractor as defined in Subarticle 4-3.9.7.

3. The Department shall have the right to reject, at its discretion, any Proposal submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending the Department's execution of a formal supplemental agreement implementing an approved Proposal, the Contractor shall remain obligated to perform



the work in accordance with the terms of the existing Contract. The Department may grant time extensions to allow for the time required to develop and review a Proposal.

4. For potential Proposals not discussed at the Cost Savings Initiative Workshop, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal prior to development of the Proposal. This mandatory meeting can only be eliminated if agreed to in writing by both the Contractor and Department.

**4-3.9.2 Subcontractors:** The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of Proposals from subcontractors. However, it is not mandatory to submit Proposals to the Department or to accept or transmit subcontractor proposed Proposals to the Department.

**4-3.9.3 Data Requirements:** As a minimum, submit the following information with each Proposal:

1. a description of the difference between the existing Contract requirement, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.

2. separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

3. an itemization of the changes, deletions or additions to plan details, plan sheets, Standard Plans and Specifications that are required to implement the Proposal if the Department adopts it. Submit preliminary plan drawings sufficient to describe the proposed changes.

4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the Proposal with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with drawings and computations signed and sealed by the Contractor's Engineer of Record. Written documentation or drawings will be submitted clearly delineating the responsibility of the Contractor's Engineer of Record.

5. the date by which the Department must approve the Proposal to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

6. a revised project schedule that would be followed upon approval of the Proposal. This schedule would include submittal dates and review time for the Department and Peer reviews.

**4-3.9.4 Processing Procedures:** Submit Proposals to the Engineer or his duly authorized representative. The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The Department is not liable for any

Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a Proposal, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the Proposal, the Department will determine the Contractor's fair share upon the basis of the Proposal as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the Proposal from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, submit acceptable Contract-quality plan sheets revised to show all details consistent with the Proposal design.

**4-3.9.5 Computations for Change in Contract Cost of Performance:** If the Proposal is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the Proposal.

The Department will not include its costs to process and implement a Proposal in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a Proposal as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

**4-3.9.6 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges:** A Proposal that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge Plans relating to the Proposal shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purposes of this article as the Independent Review Engineer who is not the originator of the Proposal design, and is pre-qualified by the Department in accordance with Rule 14-75, Florida Administrative Code. The independent peer review is intended to be a comprehensive, thorough verification of the original work, giving assurance that the design is in compliance with all Department requirements. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The Independent Review Engineer shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

The Contractor shall designate a primary engineer responsible for the Proposal design and as such will be designated as the Contractor's Engineer of Record for the Proposal design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for design of the entire structure.

New designs and independent peer reviews shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

**4-3.9.7 Sharing Arrangements:** If the Department approves a Proposal, the Contractor shall receive up to 50% of the net reduction in the cost of the performance of the Contract. The net reduction in the cost of the performance of the Contract will be determined by subtracting the reasonable documented engineering costs, incurred by the contractor to design and develop a Proposal, from the gross reduction in the cost of the performance of the Contract. The reasonable documented engineering costs incurred by the contractor will be paid for as part of the negotiated Supplemental Agreement. Engineering costs incurred by the contractor will be based on the consultant's certified invoice and may include the costs of the Independent Review Engineer in 4-3.9.6. The total engineering costs will be limited to 25% of the gross reduction in the cost of the performance of the Contract and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor.

If the Department determines that the parties identified in 337.11(17) Florida Statutes have contributed to the reduction in the cost of the performance of the contract, the contractor's share may be 45% of the net reduction.

If the Department approves a Proposal where deletions of work are the sole objective of the Proposal, the Contractor shall receive 14.5% of the net reduction in the cost of the performance of the Contract.

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a Proposal:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** The Contractor's Proposal submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's Proposal development, have or may have that are in whole or in part implicated in the Proposal. Such required intellectual property rights notice includes, but is not limited to, disclosure of any issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the Proposal that are already on the Department's Approved Product List (APL) or Standard Plans, or are otherwise generally known in the industry as being subject to patent or copyright protection.

**4-3.9.8.2 Department's Future Rights to a Proposal:** Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a Proposal, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably

necessary to fully utilize any and all aspects of such Proposal on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4-3.9.8.1, unless the Department has by express written exception in the Proposal acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

#### **4-4 Unforeseeable Work.**

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 4-3.1, 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. The Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount.

### **FROM SECTION 5 – CONTROL OF THE WORK (CLAIMS).**

#### **5-12 Claims by Contractor.**

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

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

#### **5-12.2 Notice of Claim:**

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit written notification to the Engineer of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such written notification is not submitted 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 and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

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

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

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

There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for

expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(1) and (3), and then only to the extent the Contractor could not reasonably mitigate such idleness.

If the Contractor provides the written notice of intent, the preliminary request for time extension, and the request for Contract Time extension in compliance with the aforementioned time and content requirements, the Contractor's claim for delay to a controlling work item will be evaluated as of the date of the elimination of the delay even if the Contractor's performance subsequently overcomes the delay. If the claim for delay has not been settled, the Contractor must also comply with 5-12.3 and 5-12.9 to preserve the claim.

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

1. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
2. The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
3. 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;
4. 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;
5. A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
  - a. documented additional job site labor expenses;
  - b. documented additional cost of materials and supplies;
  - c. a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
  - d. any other additional direct costs or damages and the documents in support thereof;
  - e. any additional indirect costs or damages and all documentation in support thereof.
6. A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

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

time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

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

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

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

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

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

result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

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

**5-12.7 Mandatory Claim Records:** After submitting to the Engineer a 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, submit the Contractor's daily records to the Engineer and be likewise entitled to receive the Department's daily records. The daily records to be submitted hereunder shall be done at no cost to the recipient.

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

**5-12.9 Certificate of Claim:** When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

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

1. Loss of profit, incentives or bonuses;
2. Any claim for other than extra work or delay;
3. 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;
4. 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
5. Attorney fees, claims preparation expenses and costs of litigation.

**5-12.11 Exclusive Remedies:** Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the



event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

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

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

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

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request, submit 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.

**FROM SECTION 6 – CONTROL OF MATERIALS (MATERIAL CERTIFICATION, APL, AND CONVICT LABOR ).**

**6-1.3 Certification:**

**6-1.3.1 Manufacturer Material Certification:** Submit material certifications for all materials to the Engineer for approval when required by the Specifications. Materials will not be considered for payment when not accompanied by a material certification. Sample material certification forms are available on the Department's website at the following URL: <https://www.fdot.gov/materials/administration/resources/library/publications/certifications/sampleforms.shtm> . Ensure that the material certification follows the format of the sample form, is submitted on the manufacturer's letterhead and is signed by a legally responsible person employed by the manufacturer.

**6-1.3.1.1 Approved Product 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 use of APL items to those listed on the APL effective at the time of placement. Where the terms Qualified Products List (QPL) appear in the Contract Documents, they will be synonymous with Approved Product List (APL).

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

**6-5.1 Source of Supply–Convict Labor (Federal-Aid Contracts Only):** Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway

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

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

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

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

**6-5.2 Source of Supply:** Comply with 2 CFR 184 and 2 CFR 200.322, which includes the Buy America Sourcing Preferences of the Build America, Buy America Act (BABA). Domestic compliance for all affected products will be listed on the APL. The list of affected articles, materials, and supplies that have been added to the APL and are not identified in each individual Section can be found at the following URL:

<https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm>.

**6-5.2.1 Steel and Iron:** Use steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through the final shaping and coating. If a steel or iron product is taken outside the United States for any manufacturing process, it becomes foreign source material. When using steel or iron materials as a component of any manufactured product (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply. Foreign steel and iron may be used when the total actual cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Submit a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that all steel or iron furnished or incorporated into the furnished product was produced and manufactured in the United States or a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual cost). Submit each such certification to the Engineer prior to incorporating the material or product into the project. Prior to the use of foreign steel or iron materials on a project, submit invoices to document the actual cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

**6-5.2.2 Manufactured Products:** Use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers.

**6-5.2.3 Construction Materials:** Use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

**6-5.2.4 Exemptions to Build America, Buy America:** Temporary devices, equipment, and other items removed at or before the completion of the project are exempt from BABA funding eligibility requirements. Aggregates, cementitious materials, and aggregate binding agents or additives are exempted from BABA funding eligibility requirements.

**6-5.3 Contaminated, Unfit, Hazardous, and Dangerous Materials:** Do 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. Environmental Protection Agency (EPA). 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 (OSHA).

## **FROM SECTION 7 – LEGAL REQUIREMENTS AND RESPONSIBILITIES TO THE PUBLIC (FHWA 1273, WAGE RATES, E-VERIFY, TITLE VI, DBE, AND ON-THE-JOB TRAINING)**

**7-1.1 Compliance with FHWA 1273:** The FHWA-1273 Electronic version, dated October 23, 2023 is posted on the Department’s website at the following URL address: [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/fhwa\\_1273\\_revised-10-23-23.pdf?sfvrsn=d7604d20\\_1](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/fhwa_1273_revised-10-23-23.pdf?sfvrsn=d7604d20_1)

Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Comply with the provisions contained in FHWA-1273.

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

**7-1.4 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 in the Contract Documents or permits.

In addition, in cases where certain protected, threatened or endangered species are 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: [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/endangeredwildlifeguidelines.pdf?sfvrsn=e27baf3f\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/endangeredwildlifeguidelines.pdf?sfvrsn=e27baf3f_2).

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 owner, and a person to contact to arrange a site inspection. Submit this notification at least 30 days in advance of planned commencement of the off-site activity, to allow for the Department 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.

**7-1.8 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 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, including the access route and the name of the property. It is the Contractor’s responsibility to submit 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. Submit 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.

**7-16 Wage Rates for Federal-Aid Projects.**

For this Contract, payment of predetermined minimum wages applies.

The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in table below, as modified up through ten days prior to the opening of bids.

Wage Rate Decision Number	County	Associated Work
FL20230178	Miami Dade	Highway

Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed.

## **7-24 Disadvantaged Business Enterprise Program.**

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

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

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible."

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

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

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

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

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

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

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

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

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

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

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

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

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

1. the procedures adopted to comply with these Specifications;
  2. the number of subordinated Contracts on Department projects awarded to DBEs;
  3. the dollar value of the Contracts awarded to DBEs;
  4. the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;
  5. a description of the general categories of Contracts awarded to DBEs;
- and
6. the specific efforts employed to identify and award Contracts to DBEs.

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

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

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

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

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

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

2. The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the

Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

3. When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

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

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

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

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

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

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

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

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

### **7-25 On-The-Job Training Requirements.**

As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide On-The-Job Training aimed at developing full journeymen in the type of trade or job classification involved in the work. In the event the Contractor subcontracts a portion of the contract work, it shall determine how many, if any, of the trainees are to be trained by the subcontractor provided, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Section. Ensure



that, when feasible, 25% of trainees in each occupation are in their first year of training. The Contractor shall incorporate the requirements of this Section into such subcontract.

The number of trainees will be estimated on the number of calendar days of the contract, the dollar value, and the scope of work to be performed. The trainee goal will be finalized at a Post-Preconstruction Trainee Evaluation Meeting and the goal will be distributed among the work classifications based on the following criteria:

1. Determine the number of trainees on Federal Aid Contract:

a. No trainees will be required for contracts with a Contract Time allowance of less than 275 calendar days.

b. If the Contract Time allowance is 275 calendar days or more, the number of trainees shall be established in accordance with the following chart:

Estimated Contract Amount	Trainees Required
\$2,000,000 or less	0
Over \$2,000,000 to \$4,000,000	2
Over \$4,000,000 to \$6,000,000	3
Over \$6,000,000 to \$12,000,000	5
Over \$12,000,000 to \$18,000,000	7
Over \$18,000,000 to \$24,000,000	9
Over \$24,000,000 to \$31,000,000	12
Over \$31,000,000 to \$37,000,000	13
Over \$37,000,000 to \$43,000,000	14
Over \$43,000,000 to \$49,000,000	15
Over \$49,000,000 to \$55,000,000	16
Over \$55,000,000 to \$62,000,000	17
Over \$62,000,000 to \$68,000,000	18
Over \$68,000,000 to \$74,000,000	19
Over \$74,000,000 to \$81,000,000	20
Over \$81,000,000 to \$87,000,000	21
Over \$87,000,000 to \$93,000,000	22
Over \$93,000,000 to \$99,000,000	23
Over \$99,000,000 to \$105,000,000	24
Over \$105,000,000 to \$112,000,000	25
Over \$112,000,000 to \$118,000,000	26
Over \$118,000,000 to \$124,000,000	27
Over \$124,000,000 to \$130,000,000	28
Over \$130,000,000 to *	
*One additional trainee per \$6,000,000 of estimated Construction Contract amount over \$130,000,000	

Further, if the Contractor or subcontractor requests to utilize banked trainees as discussed later in this Section, a Banking Certificate will be validated at this meeting allowing credit to the Contractor for previously banked trainees. Banked credits of prime Contractors working as Subcontractors may be accepted for credit. The Contractor's Project Manager, the Construction

Project Engineer and the Department's District Contract Compliance Manager will attend this meeting. Within ten days after the Post-Preconstruction Training Evaluation Meeting, the Contractor shall submit to the Department for approval an On-The-Job Training Schedule indicating the number of trainees to be trained in each selected classification and the portion of the Contract Time during which training of each trainee is to take place. This schedule may be subject to change if any of the following occur:

1. When a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
2. When there is a change in previously approved classifications;
3. When replacement trainees are added due to voluntary or involuntary termination

The revised schedule will be resubmitted to and approved by the Department's District Contract Compliance Manager.

The following criteria will be used in determining whether or not the Contractor has complied with this Section as it relates to the number of trainees to be trained:

1. Credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on this Contract. Credit for trainees, over the established number for this Contract, will be carried in a "bank" for the Contractor and credit will be allowed for those surplus trainees in subsequent, applicable projects. A "banked" trainee is described as an employee who has been trained on a project, over and above the established goal, and for which the Contractor desires to preserve credit for utilization on a subsequent project.

2. Credit will be allowed for each trainee that has been previously enrolled in the Department's approved training program on another contract and continues training in the same job classification and completes their training on a different contract.

3. Credit will be allowed for each trainee who, due to the amount of work available in their classification, is given the greatest practical amount of training on the contract regardless of whether or not the trainee completes training.

4. Credit will be allowed for any training position indicated in the approved On-The-Job Training Schedule, if the Contractor can demonstrate that made a good faith effort to provide training in that classification was made.

5. No credit will be allowed for a trainee whose employment by the Contractor is involuntarily terminated unless the Contractor can clearly demonstrate good cause for this action.

Training and upgrading of minorities, women and economically disadvantaged persons toward journeyman status is a primary objective of this Section. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. If a non-minority male is enrolled into the On-The-Job Training Program, the On-The-Job Training Notification of Personnel Action Form notifying the District Contract Compliance Manager of such action shall be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department's District Contract Compliance Manager. The Contractor will be given an opportunity and will be responsible for demonstrating the steps that it has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Section. This training is not intended, and shall not be used, to discriminate against any applicant for training, whether a minority, woman or disadvantaged person.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status, or have been employed as a journeyman. The Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of a Proficiency Demonstration set up at the completion of training and established for the specific training classification, completion of the minimum hours in a training classification range, and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Contract Compliance Office:

1. Trainee Enrollment and Personnel Action Form
2. Proficiency Demonstration Verification Form indicating completion of each standard established for the classification signed by representatives of both the Contractor and the Department.

The Department and the Contractor shall establish a program that is tied to the scope of the work in the project and the length of operations providing it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classifications concerned, by at least, the minimum hours prescribed for a training classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal Aid highway construction contract. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work on the classifications covered by the program.

A voluntary On-The-Job Training Program is available to a Contractor which has been awarded a state funded project. Through this program, the Contractor will have the option to train employees on state funded projects for "banked credit" as discussed previously in this provision, to be utilized on subsequent Federal Aid Projects where training is required. Those Contractors availing themselves of this opportunity to train personnel on state funded projects and bank trainee hours for credit shall comply with all training criteria set forth in this Section for Federal Aid Projects; voluntary banking may be denied by the Department if staff is not available to monitor compliance with the training criteria.

It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial type positions. Training is permissible in lower level management positions such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classifications, except Common/General Laborer, may be permitted provided that significant and meaningful training is provided and approved by the District Contract Compliance Office.

When approved in advance by the District Contract Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current contract or a Contractor will be allowed to bank trainees who have successfully completed a training

program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Contract Compliance Manager. This credit will be given even though the Contractor may receive training program funds from other sources, provided such other source do not specifically prohibit the Contractor from receiving other form of compensation. Offsite training is permissible as long as the training is an integral part of an approved training program and does not compromise a significant part of the overall training. Credit for offsite training indicated above may only be made to the Contractor when it does one or more of the following and the trainees are concurrently employed on a Federal Aid Project:

1. Contributes to the cost of the training,
2. Provides the instruction to the trainee,
3. Pays the trainee's wages during the offsite training period.

The Contractor shall compensate the trainee at no less than the laborer rate established in the Contract at the onset of training. The compensation rate will be increased to the journeyman's wage upon graduation from the training program for the remainder of the time the trainee works in the classification in which they were trained.

The Contractor shall furnish the trainee a copy of the program they will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed. The Contractor shall enroll a trainee in one training classification at a time to completion before the trainee can be enrolled in another classification on the same project.

The Contractor shall maintain records to document the actual hours each trainee is engaged in training on work being performed as a part of this Contract.

The Contractor shall submit to the District Contract Compliance Manager a copy of an On-The-Job Training Notification of Personnel Action form no later than seven days after the effective date of the action when the following actions occur: a trainee is transferred on the project, transferred from the project to continue training on another contract, completes training, is upgraded to journeyman status or voluntary terminates or is involuntary terminated from the project.

The Contractor shall furnish to the District Contract Compliance Manager a copy of a Monthly Time Report for each trainee. The Monthly Time Report for each month shall be submitted no later than the tenth day of the subsequent month. The Monthly Time Report shall indicate the phases and sub-phases of the number of hours devoted to each proficiency.

Highway or Bridge Carpenter Helper, Mechanic Helper, Rodman/Chainman, and Timekeeper classifications will not be approved for the On-The-Job Training Program.

The number of trainees may be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

The Contractor will have fulfilled the responsibilities of this Specification when acceptable training has been provided to the trainee as specified above.

#### **7-29 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.

## **FROM SECTION 8 - PROSECUTION AND PROGRESS (SUBLETTING, CONTRACT TIME EXTENSION, AND LIQUIDATED DAMAGES).**

### **8-1 Subletting or Assigning of Contracts.**

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

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

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

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. All other agreements must be in writing and reference all applicable Contract provisions. Upon request, furnish the Department with a copy of the subcontract and agreement. 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.

**8-3.2 Submission of Contract Schedule:** Within 21 calendar days after Contract award or at the preconstruction conference, whichever is earlier, submit to the Engineer a Contract Schedule for the project. The Engineer will review and respond to the Contractor within 15 calendar days of receipt.

Provide a Contract Schedule that shows the various activities of work in sufficient detail to demonstrate a reasonable and workable plan to complete the project within the Contract Time. Show the order and interdependence of activities and the sequence for accomplishing the work. Describe all activities in sufficient detail so that the Engineer can readily identify the work and measure the progress on of each activity. Show each activity with a beginning work date, a duration, and a monetary value. Include activities for procurement fabrication, and delivery of materials, plant, and equipment, and review time for shop drawings and submittals. Include milestone activities when milestones are required by the Contract Documents. In a project with more than one phase, adequately identify each phase and its completion date, and do not allow activities to span more than one phase.

Conduct sufficient liaison and provide sufficient information to indicate coordination activities with utility owners that have facilities within the limits of construction have been resolved. Incorporate in the Contract Schedule any utility work schedules included in the Contract Documents unless the utility company and the Department mutually agree to changes to the utility schedules shown in the Contract.

Submit a working plan with the Contract Schedule, consisting of a concise written description of the construction plan.

The Engineer will return inadequate Contract Schedules to the Contractor for corrections. Resubmit a corrected schedule within 15 calendar days from the date of the Engineer's return transmittal.

Submit an updated Contract Schedule, for Engineer's acceptance, if there is a significant change in the planned order or duration of an activity. The Engineer will review the corrected schedule and respond within 7 calendar days of receipt.

By acceptance of the Contract Schedule, the Engineer does not endorse or otherwise certify the validity or accuracy of the activity durations or sequencing of activities. The Engineer will use the accepted schedule as the baseline against which to measure the progress.

If the Contractor fails to finalize either the initial or a revised Contract Schedule in the time specified, the Engineer may withhold all Contract payments until the Engineer accepts the schedule.

The Contract Schedule may indicate a completion date in advance of the expiration of Contract Time. However, the Department will not be liable in any way for the Contractor's failure to complete the project prior to expiration of Contract Time. Any additional costs, including extended overhead incurred between the Contractor's scheduled completion date and the expiration of Contract Time, shall be the responsibility of the Contractor. The Contractor shall not be entitled to claim or recover any such costs from the Department.

### **8-7.3 Adjusting Contract Time:**

**8-7.3.1 Increased Work:** The Department may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new work items, or provides 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.

**8-7.3.2 Contract Time Extensions:** The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations 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 that prevent the Contractor from productively performing controlling items of work resulting in:

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

When the Department grants a time extension due to rains or other inclement weather, the Contractor shall submit any objection to the additional time in writing within ten calendar days from receipt of written notice from the Engineer. Failure to submit a written appeal within ten calendar days from receipt of the written notice shall constitute a waiver of any and all rights to appeal the Department's decision at a later time.

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.

The Department will consider requests for time extension due to delay in work operations within the limits of the railroad right-of-way, the adjoining 15 feet, or determined by the Railroad or Department to be able to potentially foul the tracks regardless of distance from railroad right-of-way on job progress as the basis for granting a time extension only if all the following criteria are met:

1. Delays are due to a lack of availability of Railroad protective services as required by 7-11.4.
2. Work within the limits of the railroad right-of-way or the adjoining 15 feet actually impacted progress toward completion of controlling work items.
3. The Contractor took all reasonable measures to minimize the effect of work operations within the limits of the railroad right-of-way or the adjoining 15 feet on job progress, including compliance with all provisions of 7-11.4 and 5-12, and cooperative scheduling of the Contractor's operations.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

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

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

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



Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), 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.

**8-10 Liquidated Damages for Failure to Complete the Work.**

**8-10.2 Amount of Liquidated Damages:** Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge Per Calendar Day
\$299,999 and under.....	\$904
\$300,000 but less than \$2,000,000.....	\$1,685
\$2,000,000 but less than \$5,000,000.....	\$2,667
\$5,000,000 but less than \$10,000,000.....	\$3,813
\$10,000,000 but less than \$20,000,000.....	\$5,021
\$20,000,000 but less than \$40,000,000.....	\$7,442
\$40,000,000 and over.....	\$10,224 plus 0.00005 of any amount over \$40 million (Round to nearest whole dollar)

The Engineer may approve adjustments to the liquidated damages amounts in accordance with the Construction Project Administration Manual (CPAM) provided all contract work is complete.

**FROM SECTION 9 - MEASUREMENT AND PAYMENT (PARTIAL PAYMENTS).**

**9-5 Partial Payments.**

**9-5.1 General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

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

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

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. **9-5.2 Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory.

**9-5.3 Withholding Payment:**

**9-5.3.1 Withholding Payment for Defective Work:** If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**9-5.3.2 Withholding Payment for Failure to Comply:** The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

1. comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job Training, and Affirmative Action;
2. comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;
3. comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and
4. comply with or make a good faith effort to meet On-The-Job Training goals.

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

**9-5.5 Partial Payments for Delivery of Certain Materials:**

**9-5.5.1 General:** The Department will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

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

6. Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**9-5.5.2 Partial Payment Amounts:** The following partial payment restrictions apply:

1. Partial payments less than \$5,000 for any one month will not be processed.

2. Partial payments for structural steel, ITS and signal components, and precast prestressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid price of the item in which the material is to be used.

3. Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Department requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

**9-5.5.3 Off Site Storage:** If the conditions of 9-5.5.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of 9-5.5.1 and the following conditions are met:

1. Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.

2. The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials:

“Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement.”

“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor’s obligation to furnish the materials described in this agreement to the Florida Department of Transportation.”

3. The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

**9-5.6 Certification of Payment to Subcontractors:** The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after

satisfactory completion of the subcontractor's work. Provide this certification in the form designated by the Department.

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

The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

**701-9.2 Removal of Existing Thermoplastic Markings:** The quantity to be paid for removal of existing thermoplastic pavement markings will be the area, in square feet, acceptably removed. Payment for removal of thermoplastic pavement markings will only be made for locations where the existing pavement surface is to remain.

**701-10 Basis of Payment.**

Price and payment will be full compensation for all work specified in this Section, including, all cleaning and preparing of surfaces, furnishing of all materials, application, curing and protection of all items, protection of traffic, furnishing of all tools, machines and equipment, and all incidentals necessary to complete the work. Final payment will be withheld until all deficiencies are corrected.

Payment will be made under:

Item No. 701	Profiled Thermoplastic Pavement Markings.
	Solid - per gross mile
	Skip - per gross mile
	Remove - per square foot

#### 4.0 BID SUBMITTAL FORM **THIS FORM IS REQUIRED**

The bid amounts specified herein are for fixed price work, which includes all prices for equipment, labor and material required to perform the work specified in this Invitation to Bid.

The Bidder further declares that he has examined the site of the work and that from personal knowledge and experience, and/or subsurface investigations that he has made, has fully satisfy himself in regard to all conditions pertaining to such site and he assumes full responsibility therefor; that the he has examined the Drawings and Specifications for the work and from his own experience or from professional advice that the Drawings and Specifications are sufficient for the work to be done and he has examined the other Contract Documents relating thereto, including the Invitation to Bid, Instructions to Bidders, Bid Security, Contract, Performance and Payment Bond, General and Special Conditions, Technical Specifications, Drawings and has read all Addenda prior to the opening of bids, and that he is fully satisfied relative to all matters and conditions with respect to the work to which this Bid pertains.

I (We) hereby acknowledge receipt of the following Addenda issued during the bidding period:

Addendum No. \_\_, dated \_\_\_\_\_

Addendum No. \_\_, dated \_\_\_\_\_

Addendum No. \_\_, dated \_\_\_\_\_

*(Add further Addenda as necessary)*

The Bidder proposes and agrees, if this bid is accepted, to contract with Miami Shores Village (Village) in the form of contract specified, to furnish all necessary materials, all equipment, all necessary machinery, tolls, apparatus, means of transportation, and labor necessary to complete the work specified in the bid and the Contract, and called for by the Drawings and Specifications and in the manner specified.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the work as stated in the Contract Form, and that the deductions for liquidated damages, also stated in the Contract Form, constitute fixed, agreed, and liquidated damages to reimburse the Village for additional costs to the Village resulting from the work not being completed within the time limits stated in the Contract Form.

The Bidder further agrees to execute a Contract and furnish satisfactory Performance and Payment Bonds and the required Certificates of Insurance, within ten (1) consecutive calendar days after receipt of written notice from the Village of the award of the Contract. The undersigned agrees that in case of failure on his part to execute the said Contract and the Performance and Payment Bond within the ten consecutive calendar days after the Award of the Contract, the Bid Security accompanying the bid and the money payable thereon shall be paid into the fund of Miami Shores Village, as liquidation of damages sustained by the Village; otherwise, the check accompanying the bid shall be returned to the undersigned after the Contract is signed and the Performance and Payments Bonds are filed.

The undersigned agrees to accept in full compensation for completion of the project in accordance with the Contract Documents, the total of the lump sum prices and extended unit prices bid for the items listed in the following Bid Schedule. It is understood that the unit prices quoted or established for a particular item are to be used for computing the amount to be paid to the Contractor, based on the quantities actually constructed as determined by the applicable measurement and payment provisions of the Specifications.

Item No.	FDOT PAY ITEM	Description	EST QTY	Unit	Unit Price	Total
<b><i>Roadway</i></b>						
1	101-1	Mobilization/Demobilization	1	LS	\$	\$
2		Field Engineering, Layout, As-Builts	1	LS	\$	\$
3	102.1	Maintenance of Traffic	90	DAY	\$	\$
4		Utility Relocates/Adjustments	1	LS	\$	\$
5		Payment and Performance Bond	1	LS	\$	\$
<b><i>Sub-Total Lines 1-5 Roadway</i></b>						
<b><i>Multi-Modal Improvements</i></b>						
1	104.18	Inlet Protection System	31	EA	\$	\$
2	110-4-10	Removal of Existing Concrete	4,050	SY	\$	\$
3	520-1-10	Concrete Curb and Gutter, Type F	6,392	LF	\$	\$
4	448105 Multi	Concrete Sidewalk, 6"	5,702	SF	\$	\$
5	527-2	Detectable Warnings	356	SF	\$	\$
6	635-2-11	Pull & Splice Box, F&I, 13" x 24" Cover Size	62	EA	\$	\$
7	700-1-50	Single Post Sign, Relocate	60	AS	\$	\$
8	715-68000	Light Pole Complete, Relocate	68	EA	\$	\$
9	710-11421	6" Solid White	5,640	EA	\$	\$
10	350-3203	Precast Tree Grate	52	EA	\$	\$
11		Site Restoration	1	LS	\$	\$

***Sub-Total Lines 1 – 11 Multi-Modal Improvements***

The Bidder acknowledges that any changes in this contract price for the work must be pre- approved in writing by the Village and that any changes in contract price may be required to go to the Village Council for approval at a Village Council meeting and that the item must be submitted four weeks in advance to appear on the Council agenda. The bidder acknowledges that any of his costs due to time for approval are to be incorporated into the change order amount.

Items listed in the Bid Form with nominal quantities are for establishing unit prices for work and are approximate.

Accompanying this Bid Guaranty, made payable to Miami Shores Village, of not less than five percent (5%) of the total actual bid, which guaranty is to be forfeited as liquidated damages, if in case this bid is accepted, the undersigned shall fail to execute the Contract under the conditions of this Bid; otherwise said guaranty is to be returned to the undersigned upon the delivery of a satisfactory bond.

(We), the undersigned, hereby certify that I (We) have carefully examined the foregoing bid after the same was completed, and have verified each item placed thereon; and I (We) agree to indemnify, defend, and save harmless, the Village against any cost, damage or expense which it may incur or be caused by any error in my (our) preparation of same.

**SIGNATURE IS REQUIRED**

Signature of Official: \_\_\_\_\_

Name (typed): \_\_\_\_\_

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

Firm: \_\_\_\_\_

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



## 5.0 REQUIRED FORMS

- 5.11 Drug Free Workplace Program
  - 5.22 Trench Safety Act
  - 5.33 Bid Bond Form
  - 5.44 Solicitation, Giving and Acceptance of Gifts Policy
  - 5.5 Sworn Statement Public Entity Crimes
  - 5.6 Affidavit Attesting to Non-Coercive Conduct for Labor or Services
  - 5.7 Affidavit Regarding Prohibition of Contracting with Entites of Foreign Countries of Concern
- 
- FDOT Form 375-030-91 Vendor Eligibility Form
  - FDOT Form 525-010-46 Certification of Current Capacity
  - FDOT Forms 375-030-33/34 Certification for Disclosure of Lobbying Activities
  - FDOT Form 575-060-13 Non-Collusion Declaration and Compliance with 49 CFR 29
  - FDOT Form 375-03-32 Certification Regarding Debarment or Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction for Federal Aid Contracts

### 5.1 DRUG FREE WORKPLACE CERTIFICATE

I, the undersigned, in accordance with Florida Statute 287.087, hereby certify that, \_\_\_\_\_ (print or type name of firm) publishes a written statement notifying that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace named above, and specifying actions that will be taken against violations of such prohibition.

- Informs employees about the dangers of drug abuse in the work place, the firm’s policy of maintaining a drug free working environment, and available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug use violations.
- Gives each employee engaged in providing commodities or contractual services that are under bid or proposal, a copy of the statement specified above.
- Notifies the employees that as a condition of working on the commodities or contractual services that are under bid or proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, plea of guilty or nolo contendere to, any violation of Chapter 1893, of any controlled substance law of the State of Florida or the United States, for a violation occurring in the work place, no later than five (5) days after such conviction, and requires employees to sign copies of such written (\*) statement to acknowledge their receipt.
- Imposes a sanction on, or requires the satisfactory participation in, a drug abuse assistance or rehabilitation program, if such is available in the employee’s community, by any employee who is so convicted.
- Makes a good faith effort to continue to maintain a drug free work place through the implementation of the drug free workplace program.

“As a person authorized to sign this statement, I certify that the above named business, firm or corporation complies fully with the requirements set forth herein”

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date Signed

State of Florida

County of \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Personally known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
(Specify type of identification)

\_\_\_\_\_  
Signature of Notary  
My Commission Expires: \_\_\_\_\_

**5.2 TRENCH SAFETY ACT**  
**(90-96, Laws of Florida)**

If this Project involves trench excavation that will exceed a depth of 5-feet, pursuant to Florida Statutes Chapter 553, Part VI, Trench Safety Act will be in effect and the undersigned Bidder hereby certifies that such Act will be complied with during the construction of this Project. Bidder acknowledges that included in the various items of the bid and in the total bid price are costs for complying with the Florida Trench Safety Act. Bidder further identifies that cost to be as summarized below.

<b>Trench Safety Measure (Description)</b>	<b>Unit of Measure (LF/SF)</b>	<b>Unit (Quantity)</b>	<b>Unit Cost</b>	<b>Extended Cost</b>
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
			<b>Total*</b>	<b>\$ _____</b>

\* Amount entered for Work Item – Trench Safety Act Compliance

Failure to complete the above may result in the bid being declared non-responsive.

Contractor agrees that the above safety compliances and costs are included in his bid package under bid item titled Trench Safety Act Compliance.

\_\_\_\_\_  
**Signature of Bidding Contractor**

**5.3 BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_  
\_\_\_\_\_ as Principal, and \_\_\_\_\_  
\_\_\_\_\_, as Surety, a Corporation chartered and existing under the laws of the State of  
\_\_\_\_\_, with its principal offices in the City of  
\_\_\_\_\_, and authorized to do business in the State of Florida are held and  
firmly bound unto the OWNER (MIAMI SHORES VILLAGE),  
\_\_\_\_\_ in the penal sum of  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of  
the United States, for the payment of which sum will and truly to be made, we bind ourselves,  
our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted  
the accompanying bid, dated \_\_\_\_\_, 20\_\_, for:

Bid # \_\_\_\_\_

Project Title: MULTIMODAL MOBILITY IMPROVEMENTS NORTH MIAMI AVE FROM NE 91ST ST TO NE 111TH ST

NOW, THEREFORE,

- A. If the principal shall not withdraw said bid within sixty (60) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Village in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.
- B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the Village the difference between the amount specified in said bid and the amount for which the Village may procure the required work and supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this \_\_\_\_ day of \_\_\_\_\_, A.D., 2025, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required).

(If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

WITNESSES:

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

\_\_\_\_\_  
Signature of Authorized Officer (Affix Seal)

\_\_\_\_\_  
Title

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

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

SURETY:

WITNESS:

\_\_\_\_\_  
Corporate Surety

\_\_\_\_\_  
Agent/Attorney in Fact

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

\_\_\_\_\_  
Business Phone Number

\_\_\_\_\_  
Name of Local Insurance Agency

IMPORTANT - Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

## 5.4 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY

Florida Statute 112.313 prohibits the solicitation or acceptance of Gifts. - “No Public officer, employee of an agency, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby.”“... The term ‘public officer’ includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.”

Miami Shores Village prohibits all public officers, elected or appointed, all employees, and their families from accepting any gifts of any value, either directly or indirectly, from any contractor, vendor, consultant, or business with whom the Village does business. Only advertising office stationery or supplies of small value are exempt from this policy - e.g. calendars, note pads, pencils.

The State of Florida definition of “gifts” includes the following: Real property or its use,  
Tangible or intangible personal property, or its use,  
A preferential rate of terms on a debt, loan, goods, or services, Forgiveness of indebtedness,  
Transportation, lodging, or parking, Membership dues,  
Entrance fees, admission fees, or tickets to events, performances, or facilities,  
Plants, flowers or floral arrangements

Services provided by persons pursuant to a professional license or certificate. Other personal services for which a fee is normally charged by the person providing the services. Any other similar service or thing having an attributable value not already provided for in this section.

Any contractor, vendor, consultant, or business found to have given a gift to a public officer or employee, or his/her family, will be subject to dismissal or revocation of contract.

As the person authorized to sign the statement, I certify that this firm will comply fully with this policy.

FIRM'S NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

Failure to sign this page may render your bid non-responsive.

**5.5 SWORN STATEMENT PURSUANT TO SECTION 287.133 (3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

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

1. This sworn statement is submitted to the Miami Shores Village, Miami Shores, Florida,

By: \_\_\_\_\_  
*(print individual's name and title)*

For: \_\_\_\_\_  
*(print name of entity submitting sworn statement)*

whose business address is: \_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is: \_\_\_\_\_  
*(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: \_\_\_\_\_).*

2. I understand that a “public entity crime” as defined in Paragraph 287.133 (1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.
3. I understand that “convicted” or “conviction” as defined in Paragraph 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or non contendere.
4. I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  1. A predecessor or successor of a person convicted of a public entity crime; or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers’ directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in

Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a “person” as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, and partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies).

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

*I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.*

---

Signature



Sworn to and subscribed before me this \_\_\_\_\_ day \_\_\_\_\_, 20 \_\_\_\_\_

Personally known \_

OR Produced the following

identification \_\_\_\_\_

Notary Public – State of \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Printed Name)

My commission expires: \_\_\_\_\_

**5.6 AFFIDAVIT ATTESTING TO  
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Village is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Village, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of \_\_\_\_\_, a nongovernmental entity.
3. \_\_\_\_\_ does not use coercion for labor or services as defined in the relevant section of the law.

In the presence of:

**Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true:**

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_

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

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

\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Entity Name: \_\_\_\_\_

**OATH OR AFFIRMATION**

State of Florida

County of \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as Commissioned)

\_\_\_\_\_  
Personally known to me; or

\_\_\_\_\_  
Produced identification (Type of Identification: \_\_\_\_\_)

\_\_\_\_\_  
Did take an oath; or

\_\_\_\_\_  
Did not take an oath

**5.7 AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Village may not knowingly enter into a contract with an entity which would give access to an individual’s personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Village which would grant the entity access to an individual’s personal identifying information.

- 1. \_\_\_\_\_ (“entity”) does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

In the presence of:

**Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true:**

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_

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

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

\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Entity Name: \_\_\_\_\_

**OATH OR AFFIRMATION**

State of Florida  
County of \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as Commissioned)

- \_\_\_\_\_  
Personally known to me; or
- \_\_\_\_\_  
Produced identification (Type of Identification: \_\_\_\_\_)
- \_\_\_\_\_  
Did take an oath; or
- \_\_\_\_\_  
Did not take an oath

Project Description(s):Miami Shores Village

Financial Project Number(s):FM 441638-01-58-1

In accordance with State law:

The Convicted Vendor List/ Discriminatory Vendor List / Suspended Vendor List/Antitrust Violator Vendor List/Scrutinized List of Prohibited Companies/Federal Excluded Parties List are available at the following Department of Management Services site:

[http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)

A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017, F.S., for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to Section 287.133(3)(f), F.S. A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.

A contract award (reference 2 CFR 1200 and 2 CFR 180) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." Pursuant to 23 CFR 172.7(b)(3), a contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180, when the identities of such subconsultants are known prior to execution of the subject agreement or contract. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Section 287.135, F.S. prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel. Section 287.135, F.S. also prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of \$1,000,000 or more, if the company is on either the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Terrorism Sectors Lists which are created pursuant to s. 215.473, F.S.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**Vendor Eligibility Check Prior to Contract Award**

375-030-91  
PROCUREMENT  
09/24

The List of Scrutinized Companies that Boycott Israel, and the Scrutinized List of Prohibited Companies (Activities in Sudan/Iran Terrorism Sectors) are available at the following Florida State Board of Administration site:

<https://www.sbafla.com/governance/global-governance-mandates>

\*Please note that the two lists are under separate links on the same site.

I have checked the aforementioned lists that apply to this procurement, as applicable to verify that the vendor (and all subs where known) is eligible for contract award/execution:

Procurement Office or Contracting Awarding Office:

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

\_\_\_\_\_  
Signature

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

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

525-010-46  
PROGRAM MANAGEMENT  
09/20  
Page 1 of 2

CONFIDENTIAL per Ch 337.14(1) F.S.

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

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

CERTIFICATE

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

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

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

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

I certify that the information above is correct.

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

\_\_\_\_\_  
NAME OF FIRM  
By: \_\_\_\_\_  
\_\_\_\_\_  
Title

### STATUS OF CONTRACTS ON HAND

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES  
ON FEDERAL-AID CONTRACTS  
(Compliance with 49CFR, Section 20.100 (b))**

375-030-33  
PROCUREMENT  
01/24

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Name of Consultant: \_\_\_\_\_

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

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

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



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DISCLOSURE OF LOBBYING ACTIVITIES**

375-030-34  
 PROCUREMENT  
 02/16

Is this form applicable to your firm?  
 YES  NO   
 If *no*, then please complete section 4  
 below for "Prime"

<b>1. Type of Federal Action:</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing b. material change <b>For Material Change Only:</b> Year: _____ Quarter: _____ Date of last report: _____ (mm/dd/yyyy)
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : _____ _____ _____ Congressional District, <i>if known</i> : 4c _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b> _____ _____ _____ Congressional District, <i>if known</i> : _____	
<b>6. Federal Department/Agency:</b> _____ _____	<b>7. Federal Program Name/Description:</b> _____ _____ CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i> _____ _____ _____	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> _____ _____ _____	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date (mm/dd/yyyy): _____	
<b>Federal Use Only:</b>	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the fullname, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**NON-COLLUSION DECLARATION AND  
COMPLIANCE WITH 49 CFR § 29**

575-060-13  
RIGHT OF WAY  
05/01  
Page 1 of 3

ITEM/SEGMENT NO.: \_\_\_\_\_  
F.A.P. NO.: \_\_\_\_\_  
MANAGING DISTRICT: \_\_\_\_\_  
PARCEL NO.: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_  
BID LETTING OF: \_\_\_\_\_

I, \_\_\_\_\_, hereby declare that I am  
(NAME)  
\_\_\_\_\_ of \_\_\_\_\_  
(TITLE) (FIRM)  
of \_\_\_\_\_  
(CITY AND STATE)

and that I am the person responsible within my firm for the final decision as to the price(s) and amount of this Bid on this State Project.

I further declare that:

1. The prices(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be so disclosed prior to the bid opening.
3. No attempt has been made or will be made to solicit, cause or induce any other firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this Declaration.
8. As required by Section 337.165, Florida Statutes, the firm has fully informed the Department of Transportation in writing of all convictions of the firm, its affiliates (as defined in Section 337.165(l)(a), Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract or for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees of the firm or affiliates who were convicted of contract crimes while in the employ of another company.

9. I certify that, except as noted below, neither my firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of Federal funds:

- (a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR §29.110(a), by any Federal department or agency;
- (b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against him or her for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State or local government transaction or public contract; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (c) is presently indicted for or otherwise criminally or civilly charged by a Federal, State or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and
- (d) has within a three-year period preceding this certification had one or more Federal, State or local government public transactions terminated for cause or default.

10. I(We), certify that I(We), shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract by any Federal Agency unless authorized by the Department.

Where I am unable to declare or certify as to any of the statements contained in the above stated paragraphs numbered (1) through (10), I have provided an explanation in the "Exceptions" portion below or by attached separate sheet.

EXCEPTIONS:

(Any exception listed above will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate to whom it applies, initiating agency and dates of agency action. Providing false information may result in criminal prosecution and/or administrative sanctions.)

I declare under penalty of perjury that the foregoing is true and correct.

CONTRACTOR: \_\_\_\_\_ (Seal)

BY: \_\_\_\_\_  
NAME AND TITLE PRINTED

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_  
SIGNATURE

WITNESS: \_\_\_\_\_

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**FAILURE TO FULLY COMPLETE AND EXECUTE THIS DOCUMENT  
MAY RESULT IN THE BID BEING DECLARED NONRESPONSIVE**

## REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors and other lower tier participants.

- Appendix B of 49 CFR Part 29 –

### Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

#### *Instructions for Certification*

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant/Contractor: \_\_\_\_\_

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

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

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

#### Instructions for Certification

**Instructions for Certification - Lower Tier Participants:**

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

# ATTACHMENT "A"

## Davis-Bacon Minimum Wages

State: Florida

Construction Type: Highway

County: Miami-Dade County in Florida.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>◆ Executive Order 14026 generally applies to the contract.</li> <li>◆ The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>◆ Executive Order 13658 generally applies to the contract.</li> <li>◆ The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2024.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
 0                              09/13/2024

SUFL2022-029 06/27/2024

	Rates	Fringes
CARPENTER.....	\$ 19.98	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 19.54	0.00
ELECTRICIAN.....	\$ 34.43	10.84
IRONWORKER.....	\$ 24.44	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 16.65 **	0.00
LABORER: Common or General.....	\$ 15.63 **	1.05
LABORER: Mason Tender - Cement/Concrete.....	\$ 20.24	2.01
LABORER: Pipelayer.....	\$ 17.86	0.00



LABORER: Grade Checker.....	\$ 17.21	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.00	1.23
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 17.14 **	0.00
OPERATOR: Boom.....	\$ 33.61	11.50
OPERATOR: Broom/Sweeper.....	\$ 16.46 **	0.00
OPERATOR: Bulldozer.....	\$ 20.89	0.00
OPERATOR: Crane.....	\$ 36.36	0.00
OPERATOR: Grader/Blade.....	\$ 19.25	0.00
OPERATOR: Loader.....	\$ 17.11 **	0.00
OPERATOR: Mechanic.....	\$ 29.69	0.00
OPERATOR: Milling Machine.....	\$ 19.68	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 18.55	0.00
OPERATOR: Piledriver.....	\$ 22.02	0.00
OPERATOR: Roller.....	\$ 16.61 **	0.00
OPERATOR: Scraper.....	\$ 15.54 **	0.00
OPERATOR: Screed.....	\$ 19.24	0.00
OPERATOR: Tractor.....	\$ 16.91 **	0.66
PAINTER.....	\$ 21.02	0.00
TRAFFIC CONTROL PERSON.....	\$ 16.56 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 16.53 **	0.00
TRUCK DRIVER: Flatbed Truck.....	\$ 19.46	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 21.36	2.45
TRUCK DRIVER: Off the Road Truck.....	\$ 16.55 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 18.27	0.00
TRUCK DRIVER: Distributor Truck.....	\$ 19.02	0.00

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

=====

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is

like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

#### Survey Rate Identifiers

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

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

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

#### State Adopted Rate Identifiers

Classifications listed under the ""SA"" identifier indicate that

the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

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WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"

# ATTACHMENT “B”

## CONSTRUCTION AGREEMENT



**AGREEMENT No.2024-12-02  
MULTIMODAL MOBILITY IMPROVEMENTS ALONG NORTH MIAMI AVENUE  
FROM NE 91<sup>ST</sup> STREET TO NE 111<sup>TH</sup> STREET – FM 441638-1-58-01  
BETWEEN  
MIAMI SHORES VILLAGE  
AND (CONTRACTOR NAME)**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between (Contractor Name) a corporation organized and existing under the laws of the State of Florida, having its principal office at (Contractor Address) (hereinafter referred to as the "CONTRACTOR"), and Miami Shores Village, a political subdivision of the State of Florida, having its principal office at 10050 N.E. 2<sup>nd</sup> Avenue, Miami Shores, Florida 33138 (hereinafter referred to as the "VILLAGE"),

**RECITALS**

**WHEREAS**, the VILLAGE desires to retain a CONTRACTOR for the Federally Funded Local Agency Multimodal Mobility Improvements. All specific duties are listed within the Scope of Work hereto attached by reference; and

**WHEREAS**, the CONTRACTOR has offered to provide the services and to be bound by the terms and conditions of the Invitation to Bid "(ITB) No. 2024-12-02 Miami Shores Village Multimodal Mobility Improvements", which includes the General Terms and Conditions, Special Conditions, Scope of Services, and associated addenda attached hereto and incorporated herein as Exhibit "A", and the assertions included in the Contractor's Proposal attached hereto and incorporated herein as Exhibit "B";

**WHEREAS**, CONTRACTOR desires to render services described in the Scope of Services and has the qualifications, experience, staff and resources to perform those services; and,

**WHEREAS**, the VILLAGE is the recipient of funds, which are administered through the Florida Department of Transportation as a Federally Funded Local Agency Program (LAP) project; and,

**WHEREAS**, as a recipient of funds through the Florida Department of Transportation, the VILLAGE is required to include certain terms and conditions in any Agreement with a CONTRACTOR employed to perform the services described in the scope of services; and,

**WHEREAS**, through a competitive solicitation process conducted in accordance with the requirements of Florida law, the VILLAGE has determined that it to be in the best interest of the VILLAGE

to award an Agreement to the Contractor for the rendering of those services described in the scope of services; and

**WHEREAS**, the Project is federally funded by the US Department of Transportation and allocated through the Florida Department of Transportation and requires that certain conditions are followed to comply with their requirements. Therefore, F.D.O.T. Division 1 Specifications are set forth by the F.D.O.T. CONTRACTOR must be in full compliance of all conditions listed therein; and

**WHEREAS**, the Florida Department of Transportation has adopted and adheres to program plans which recognize Disadvantaged Business Enterprises Program Plan for Local Agencies and provisions for Equal Opportunity Employment. The plans are identified in the FDOT Division 1 Specifications.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

#### **INCORPORATION BY REFERENCE AND ENTIRE AGREEMENT.**

The foregoing "Whereas" clauses are hereby incorporated by reference and affirmed and ratified by the parties as true and correct. The Documents which comprise this Agreement between the VILLAGE and the CONTRACTOR are attached hereto, made a part hereof consists of the following:

- A. This Agreement;
- B. ITB 2024-12-02 hereto as Exhibit "A", including Addendums;
- C. CONTRACTOR Bid Response hereto as Exhibit "B";
- D. Disadvantaged Business Enterprises Program Plan for Local Agencies attached hereto as Exhibit "C", FDOT Form 275-030-11;
- E. Terms for Federal-Aid Contract attached hereto as Exhibit "D";
- F. Disclosure of Lobbying Activities. FDOT Form 375-030-33 and 375-030-34 attached hereto as Exhibit "E".
- G. Project Completion and Fee Schedule attached hereto as Exhibit "F"

In the event of a conflict between any of the terms and conditions in the Exhibits and this Agreement, this Agreement shall prevail.

#### **ARTICLE 1 – DEFINITIONS**

Whenever used in this Agreement or in other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural forms:

1.1 Agreement – This written agreement between the Village and the Contractor covering the work to be performed including other Contract Documents that are attached to or incorporated in the Agreement.

1.2 Application for Payment – The form accepted by the Village which is to be used by the Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents

1.3 Approve – The word approve is defined to mean review of the material, equipment or methods for general compliance with design concepts and with the design concepts and with the information given in the Contract Documents. It does not imply a responsibility on the part of the Village to verify in every detail conformance with plans and specifications.

1.4 Bid – The offer or Bid of the Contractor submitted on the prescribed form setting forth the total prices for the Work to be performed.

1.5 Bid Documents – This Agreement, advertisement for Invitation to Bids, the Instructions to Bidders, the Bid Form (with supplemental affidavits and agreements), the Contract Forms, General Conditions, the Supplementary Conditions, the Specifications, and the Plans, which documents all become an integral part of the Contract Documents.

1.6 Certificate of Substantial Completion - Certificate provided by the Village certifying that all Work, excluding the punch list items, has been completed, inspected, and accepted by the Village.

1.7 Change Order - A change order is defined as a written order to a contractor approved by the Village, authorizing a revision of an underlying agreement between the Village and a contractor that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of the contract.

1.8 Village – Miami Shores Village, Miami Shores, Florida including but not limited to its employees, agents, officials, representatives, contractors, subcontractors, volunteers, successors and assigns, with whom the Contractor has entered into the Agreement and for whom the Work is to be provided. The Project Manager, or designee, shall be the authorized agent for the Village unless otherwise specified.

1.9 Contract Documents – The Contract Documents shall consist of this Agreement, Exhibits to this Agreement, Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance, Notice of Award and Notice to Proceed, General Conditions as amended by the Special Conditions, Technical Specifications, Plans/Drawings, Addenda, Bid Form and supplement Affidavits and Agreements, FHWA 1273, all applicable provisions of State and Federal Law and any modification, including Change Orders or written amendments duly delivered after execution of Agreement, Invitation to Bid, Instructions to Bidders and Bid Bond, Contractor's response to the Village's Invitation to Bid, Schedule of Completion and Schedule of Values, all amendments, modifications and supplements, change orders and work directive changes issued on or after the Effective Date of the Agreement, as well as any documents that are required to be submitted under the Agreement.

Permits on file with the Village and or those permits to be obtained shall be considered directive in nature and will be considered a part of this Agreement. A copy of all permits shall be given to the Village for inclusion in the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.

1.10 Contract Price – The monies payable to the Contractor by the Village under the Contract Documents and in accordance with the line item unit prices listed in the Bid.

1.11 Contract Time – The number of calendar days stated in the Agreement for the completion of the Work. The dates on which the work shall be started and shall be completed as stated in the Notice to Proceed.

- 1.12 Contractor – The person, firm, company, or corporation with whom the Village has entered into the Agreement, including but not limited to its employees, agents, representatives, contractors, subcontractors, their subcontractors and their other successors and assigns.
- 1.13 Day – A calendar day of twenty-four (24) hours ending at midnight.
- 1.14 Defective – An adjective which when modifying the word “Work” refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to the Project Manager’s recommendation of final payment.
- 1.15 Effective Date of the Agreement – The date specified in the Notice to Proceed given by the Village to the Contractor indicating when the Contract Time will commence to run and on which the Agreement becomes effective, but if no such date is indicated, it means the date on which the Agreement is approved by the Village Council or if Village Council approval is not required it is the date on which the Agreement is fully executed by the Village.
- 1.16 Final Completion Date – The date the Work is completed, including completion of the final punch list, and delivered along with those items specified in the Contract Documents and is accepted by the Village.
- 1.17 Hazardous Materials (HAZMAT) - Any solid, liquid, or gaseous material that is toxic, flammable, radioactive, corrosive, chemically reactive, or unstable upon prolonged storage in quantities that could pose a threat to life, property, or the environment defined in Section 101(14) of Comprehensive Environmental Response, Compensation and Liability Act of 1980 and in 40 CFR 300.6. Also defined by 49 CFR171.8 as a substance or material designated by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and which has been so designated.
- 1.18 Hazardous Substance - As defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act; any substance designated pursuant to Section 311(b) (2) (A) of the Clean Water Act; any element, compound, mixture, solution or substance designated pursuant to Section 102 identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act {but not including any waste listed under Section 307[a] of the Clean Water Act}; any hazardous air pollutant listed under Section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture pursuant to Section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- 1.19 Hazardous Waste - Those solid wastes designated by OSHA in accordance with 40 CFR 261 due to the properties of ignitability, corrosivity, reactivity, or toxicity. Any material that is subject to the Hazardous Waste Manifest requirements of the EPA specified in 40 CFR Part 262.
- 1.20 Holidays - Those designated non-work days as established by the Council of Miami Shores Village.
- 1.21 Inspection – The term “inspection” and the act of inspecting as used in this Agreement is defined to mean the examination of construction to ensure that it conforms to the design concept expressed in the plans and specifications. This term shall not be construed to mean supervision, superintending and/or overseeing.



1.22 Notice of Award - The written notice by Village to the Contractor stating that upon compliance by the Contractor with the conditions precedent enumerated therein, within the time specified that the Village will sign and deliver this Agreement.

1.23 Notice to Proceed - A written notice given by the Village to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contract Time will end.

1.24 Plans - The drawings which show the character and scope of the work to be performed and which have been prepared or approved by the Village and are referred to in the Contract Documents.

1.25 Premises (otherwise known as Site or Work Site) - means the land, buildings, facilities, etc. upon which the Work is to be performed.

1.26 Project - The total construction of the Work to be provided as defined in the Contract Documents.

1.27 Project Manager - The employee of the Village, or other designated individual who is herein referred to as the Project Manager, will assume all duties and responsibilities and will have the rights and authorities assigned to the Project Manager in the contract Documents in connection with completion of the Work in accordance with this Agreement.

1.28 Punch List - The Village's list of Work yet to be done or be corrected by the Contractor, before the Final Completion date can be determined by the Village.

1.29 Record Documents - A complete set of all specifications, drawings, addenda, modifications, shop drawings, submittals and samples annotated to show all changes made during the construction process.

1.30 Record Drawings or "As-Built" - A set of drawings which show significant changes in the work made during construction and which are usually based on drawings marked up in the field and other data furnished by the contractor. These documents will be signed and sealed by the ENGINEER of Record or a Professional Land Surveyor licensed in the State of Florida.

1.31 Substantially Completed Date - A date when the Contractor has requested in writing, stating that the Work is substantially completed and is ready for an inspection and issuance of a final punch list for the Project.

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

## ARTICLE 2 – SCOPE OF WORK

2.1 The Contractor shall complete all work as specified or indicated in the Contract Documents. The Project for which the Work under the Contract Documents may be the whole or only part is generally described as follows: “2024-12-02 Miami Shores Village Multimodal Mobility Improvements North Miami Ave from NE 91st Street to NE 111th Street - FM 441638-1-58-01”

2.2 All Work for the Project shall be constructed in accordance with the Drawings and Specifications. The Work generally involves the construction of multimodal mobility improvements.

2.3 Within ten (10) days of the execution of this Agreement, the Contractor shall submit a Construction Schedule, Schedule of Values and a listing of those subcontractors that will be utilized by the Contractor. The general sequence of the work shall be submitted by the Contractor and approved by the Village before any work commences. The Village reserves the right to issue construction directives necessary to facilitate the Work or to minimize any conflict with operations.

### **ARTICLE 3 – MANAGER**

3.1 The Project Manager is hereby designated by the Village as Frank Ruiz, Assistant, Public Works Director. The Project Manager will assume all duties and responsibilities and will have the rights and authorities assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with this Agreement.

### **ARTICLE 4 – CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire Agreement between the Village and Contractor are attached to this Agreement, are made a part hereof and consist of the following:

- 4.1 This Agreement.
- 4.2 Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance.
- 4.3 Notice of Award and Notice to Proceed.
- 4.4 General Conditions as amended by the Special Conditions.
- 4.5 Technical Specifications.
- 4.6 Plans/Drawings
- 4.7 Bid Form and supplement Affidavits and Agreements.
- 4.8 All applicable provisions of State and Federal Law and any modification, including Change Orders or written amendments duly delivered after execution of Agreement.
- 4.9 Invitation to Bid No. 2024-12-02 Instructions to Bidders and Bid Bond.
- 4.10 Contractor's response to the Village's Invitation to Bid No. 2024-12-02
- 4.11 FHWA 1273
- 4.12 Schedule of Completion and Schedule of Values.
- 4.13 All amendments, modifications and supplements, change orders and work directive changes, issued on or after the Effective Date of the Agreement.
- 4.14 Any Additional documents that are required to be submitted under the Agreement.
- 4.15 Permits on file with the Village and or those permits to be obtained shall be considered directive in nature and will be considered a part of this Agreement. A copy of all permits shall be given to the Village for inclusion in the Contract Documents. Terms of permits shall be met prior to

acceptance of the Work and release of the final payment.

There are no Contract Documents other than those listed in this Article 4. The Contract Documents may only be altered, amended, or repealed in accordance with the provisions of the terms of this Agreement.

In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- A. Specific direction from the Village Manager (or designee)
- B. This Agreement dated , and any attachments.
- C. Invitation to Bid No., 2024-12-02 and the specifications prepared by the Village.
- D. Contractor's Response to Bid No. 2024-12-02 dated \_\_\_\_\_
- E. Schedule of Values.
- F. Schedule of Completion.

4.16 If during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to the Project Manager, in writing, at once and before proceeding with the Work affected shall obtain a written interpretation or clarification from the Village.

4.17 It is the intent of the specifications and plans to describe a complete Project to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the specifications or plans as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such works shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or associations, or to the code of any governmental authority whether such reference be specific or implied, shall mean the latest standard specification, manual or code in effect as of the Effective Date of this Agreement, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of the Village, the Contractor, or any of their agents or employees from those set forth in the Contract Documents.

## ARTICLE 5. CONTRACT RESTRICTION PROVISION

The following items will not be allowed in this contract:

5.1 **Contractor Purchased Equipment for State of Local Ownership** – Per 23 CFR 140 / 2 CFR 200.313 and 23 U.S.C. 302.

5.2 **State of Florida or other locally produced materials.** Preference program mandating materials purchasing requirements or restrictions are not allowed. Per 23 CFR 635.409

5.3 **Public Agencies in Competition with the Private Sector** Per 23 CFR 635.112(e),

5.4 **Publicly owned Equipment** - Per 23 CFR 635.106,

5.5 **State/Local Owned/ Furnished Designated Materials** Per 23 CFR 635.407 Note: Local Agency tax savings programs are will not be allowed.

5.6 **Local/State Hiring Preferences** Per 23 CFR 635.117) and 23 CFR 635.112(d). No Preference programs. Examples include in-state or local business; location of contractor; limitations in business enterprises; local economic development hiring practices or programs; targeted hiring practices or programs (e.g., homeless, welfare-to-work, veterans); or exclusionary business preferences not based on federal sanctions.

5.7 **Patented/Proprietary/Sole Sources Materials** will not be allowed on this contract. 337.02F.S.

5.8 **Incentive/ Disincentive Clauses.** The Agency has elected not to use incentive/disincentive clauses in this proposal. Per 23 CFR 635.127 (d & f).

5.9 **Indian Preference on Federal Aid Projects** (Labor & Employment) is not allowed on this contract. Per 23 CFR 635.117(e).

5.10 **Owner Force Account Contracting** Per 23 CFR 635 Subpart B & 255.20 F.S.

5.11 **Foreign Contractor and Supplier Restrictions.** Agency will not limit this proposal to domestic owned contractors only. Per 49 CFR 30

5.12 **On the Job Training** will not be allowed in this contract.

#### **ARTICLE 6 CONTRACT TIME**

6.1 The Contractor recognizes that TIME IS OF THE ESSENCE. Each work order shall commence within ten (10) calendar days of the date of the Notice to Proceed.

6.2 The Work shall be Substantially completed within one hundred fifty (150) calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed.

6.3 The Work shall be finally completed on the Final Completion Date and ready for final payment in accordance with this Agreement within calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed.

6.4 The CONTRACTOR shall make no claims for additional compensation or damages due to suspensions, delays or hindrances. CONTRACTOR may only be compensated for the extension of time as the VILLAGE AND F.D.O.T. may decide. However, such extension shall not operate as a waiver of any other rights of the VILLAGE.

#### **ARTICLE 7 CONTRACT PRICE**

7.1 Village shall pay Contractor for performance of the Work in accordance with Article 8, subject to additions and deletions by Change Order, as provided for in this Agreement.

The parties expressly agree that the Contract Price which shall not exceed the amount of \$ \_\_\_\_\_ constitutes the total maximum compensation payable to the Contractor for performing the Work, plus any Work done pursuant to a Change Order. Contract Price is in accordance with the line item unit prices listed in the Bid. Line items are based on a unit price cost multiplied by a defined quantity. Any additional duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change to the Contract Price.

7.1 The Contract Price constitutes the compensation payable to Contractor for performing the Work plus any Work done pursuant to a Change Order. All duties responsibilities and obligations assigned to or undertaken by Contractor shall be at the Contractor's expense without change in the Contract price.

## **ARTICLE 8 PAYMENT PROCEDURES**

8.1 Contractor shall submit Applications for Payment in accordance with the Contract Documents. Applications for Payment will be processed by Village as provided in the General Conditions.

8.2 Progress Payments. Village shall make progress payments based on work completed and on account of the Contract Price on the basis on the Contractor's monthly Applications for Payment, which shall be submitted by the Contractor between the first (1st) and the tenth (10th) day after the end of each calendar month for which payment is requested. All progress payments will be made on the basis of the progress of the Work completed.

8.3 Prior to Final Completion, progress payments will be made in an amount equal to ninety-five percent (95%) of the value of Work completed less in each case the aggregate of payments previously made.

8.4 Final Payment. Upon final completion of the Work in accordance with the General Conditions, as may be supplemented, the Village shall pay Contractor an amount sufficient to increase total payments to one-hundred percent (100%) of the Contract Price. However, not less than five percent (5%) of the Contract Price shall be retained until Record Drawings (as-built), specifications, addenda, modifications and shop drawings. Including all manufacturers' instruction and parts manuals are delivered to and accepted by the Village.

8.5 The Village shall make payment to the Contractor in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

## **ARTICLE 9 - CONTRACTOR'S REPRESENTATIONS**

In order to induce the Village to enter into this Agreement, Contractor makes the following representations upon which the Village has relied:

9.1 Contractor is qualified in the field of public construction and in particular to perform the Work and services set forth in this Agreement.

9.2 Contractor has visited the Work Site, has conducted extensive tests, examinations and investigations and represents and warrants a thorough familiarization with the nature and extent of the Contract Documents, the Work, locality, soil conditions, moisture conditions and all year-round local weather and climate conditions (past and present), and, in reliance on such tests, examination and investigations conducted by Contractor and the Contractor's experts, has determined that no conditions exist that would in any manner affect the Proposed Price and that the project can be completed for the Proposed Price submitted within the Contract Time as defined in this Agreement. Furthermore, Contractor warrants and confirms that he is totally familiar with, understands and obligates Contractor to comply with all federal, state and local laws, ordinances, rules, regulations and all market conditions that affect or may affect the cost and price of materials and labor needed to fulfill all provisions of this Agreement or that in any manner may affect cost, progress or performance of the Work.

9.3 The Contractor has satisfied itself as to the nature and location of the Work under the Contract

Documents, the general and local conditions of the Project, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on Village provided reports, the type of equipment and facilities needed preliminary to and during the prosecution of the Work and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

9.4 The Contractor has also studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Works, and finds and has further determined that no conditions exist that would in any manner affect the Proposed Price and that the project can be completed for the Proposed Price submitted.

9.5 Contractor has made or caused to be made examinations, investigations, tests and studies of such reports and related data in addition to those referred to as he deems necessary for the performance of the Work at the Contract Prices, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are, or will be, required by Contractor for such purposes.

9.6 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

9.7 Contractor has given Village written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution by Village is acceptable to the Contractor.

#### 9.8 Labor

9.8.1 The Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the site.

9.8.2 The Contractor shall, at all times, have a competent superintendent, capable of reading and thoroughly understanding the drawings and specifications, as the Contractor's agent on the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work.

9.8.3 The Contractor shall designate the superintendent on the job to the Village, in writing, immediately after receipt of the Notice to Proceed. The Contractor understands and agrees that the superintendent's physical presence on the job site is indispensable to the successful completion of the Work. If the superintendent is frequently absent from the job site, the Project Manager may deliver written notice to the Contractor to stop work or terminate the Contract in accordance with Article 19 and Article 25.

9.8.4 The Contractor shall assign personnel to the job site that have successfully completed training programs related to trench safety, confined space and maintenance of traffic. A certified "competent person" shall be assigned to the job site. Personnel certified by the International Municipal Signal Associations with Florida Department of Transportation qualifications are required relative to maintenance of traffic. Failure to pursue the Work with the properly certified supervisory staff may result in notice to stop work or terminate the Contract in accordance with Article 19 and Article 25.

9.9 Materials: The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of Work.

9.9.1 All material and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. Suppliers shall be selected and paid by the Contractor; the Village reserves the right to approve all suppliers and materials.

9.10 Work Hours Except in connection with the safety or protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all work at the site shall be performed during regular working hours between 7:30 a.m. and 4:00 p.m., Monday through Saturday. The Contractor will not permit overtime work or the performance of work on Sunday or any legal holiday (designated by Miami Shores Village) without the Project Manager's written consent at least seventy-two (72) hours in advance of starting such work. If the Project Manager permits overtime work, the Contractor shall pay for the additional charges to the Village with respect to such overtime work. Such additional charges shall be a subsidiary obligation of the Contractor and no extra payment shall be made to the Contractor for overtime work. The cost to the Contractor to reimburse the Village for overtime inspection is established at direct-labor and overtime costs for each person or inspector required. Incidental overtime costs for engineering, testing and other related services will also be charged to the Contractor at the actual rate accrued.

9.11 Permits: The Contractor shall obtain and pay for all permits and licenses. There shall be no allowance for Contractor markup, overhead or profit for permits and licenses. The Contractor shall pay all government charges which are applicable at the time of opening of proposals. It shall be the responsibility of the Contractor to secure and pay for all necessary licenses and permits of a temporary nature necessary for the prosecution of Work.

9.12 Law and Regulations: The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the specifications or plans are at variance therewith, the Contractor shall give the Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by any appropriate modifications. If the Contractor performs any work knowing or having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to the Project Manager, the Contractor shall bear all (any work knowing from; however, it shall not be the primary responsibility to make certain that the specifications and plans are in accordance with such laws, ordinances, rules and regulations.

9.13 Taxes: The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the laws of Miami Shores Village, County of Miami Dade, and State of Florida.

9.14 Contractor Use of Premises: The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and/or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

9.14.1 The Contractor shall not enter upon private property for any purpose without first securing the permission of the property owner in writing and furnishing the Project Manager with a copy of said permission. This requirement will be strictly enforced, particularly with regard to such vacant properties as may be utilized for storage or staging by the Contractor.

9.14.2 The Contractor shall conduct his work in such a manner as to avoid damage to adjacent private or public property. Any damage to existing structures of work of any kind, including permanent reference markers or property corner markers, or the interruption of a utility service, shall be repaired or restored promptly at no expense to the Village or property owner.

9.14.3 The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site which do not reasonably interfere with the construction, as determined by the Project Manager. The Contractor will be responsible for repairing or replacing any trees, shrubs, lawns and landscaping that may be damaged due to careless operation of equipment, stockpiling of materials, tracking of grass by equipment or other construction activity. The Contractor will be liable for, or will be required to replace or restore at no expense to the Village all vegetation not protected or preserved as required herein that may be destroyed or damaged.

9.14.4 During the progress of the work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and debris resulting from the Work. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials and shall leave the site clean and ready for occupancy by the Village. The Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents at no cost to the Village.

9.15 Project Coordination: The Contractor shall provide for the complete coordination of the construction effort. This shall include, but not necessarily be limited to, coordination of the following:

9.15.1 Flow of material and equipment from suppliers.

9.15.2 The interrelated work with affected utility companies.

9.15.3 The interrelated work with the Village where tie-ins to existing facilities are required.

9.15.4 The effort of independent testing agencies.

9.15.5 Notice to affected property owners as may be directed by the Project Manager.

9.16 Project Record Documents and As-Built (Record Drawings): The Contractor shall keep one record copy of all specifications, plans addenda, modifications, shop drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to the Project Manager for examination and shall be delivered to the Project Manager upon completion of the Work. Upon completion of the project and prior to final payment, an as-built (record drawings) of the Project shall be submitted to the Project Manager.

The as-built drawings shall be signed and sealed by a Florida Registered Professional Surveyor and Mapper, Engineer, Architect or Landscape Architect depending on the type of drawing.

9.17 Safety and Protection:

9.17.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

9.17.2 All employees working on the project and other persons who may be affected thereby.

9.17.3 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site.



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

9.17.5 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utilities when execution of the Work may affect them at least seventy-two (72) hours in advance (unless otherwise required). All damage, injury or loss to any property caused, directly or indirectly, in whole or in part by the Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. The Contractor's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and accepted by the Village.

9.18 Emergencies: In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Village is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

9.19 Risk of Loss: The risk of loss, injury or destruction shall be on the Contractor until acceptance of the Work by the Village. Title to the Work shall pass to the Village upon acceptance of the Work by the Village.

9.20 Environmental: The Contractor has fully inspected the Premises and agrees, except as to the presence of any asbestos, to accept the Premises in an "as is" physical condition, without representation or warranty by the Village of any kind, including, without limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the Premises. Further, Contractor and all entitles claiming by, through or under the Contractor, releases and discharges the Village, from any claim, demand, or cause of action arising out of or relating to the Contractor's use, handling, storage, release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the Premises. The Contractor shall have no liability for any pre-existing claims or "contamination" on the Premises.

9.20.1 The Contractor shall not use, handle, store, discharge, treat, remove, transport, or dispose of Hazardous Substances including asbestos at, in, upon, under, to or from the Premises until receipt of instructions from the Village. At such time, a Village approved Change Order, which shall not include any profit, shall authorize the Contractor to perform such services.

9.20.2 The Contractor shall immediately deliver to the Project Manager complete copies of all notices, demands, or other communications received by the Contractor from any governmental or quasi- governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity on the Premises which is or could be dangerous to life, limb, property, or the environment.

9.20.3 For other and additional consideration, the Contractor hereby agrees, at its sole cost and expense, to indemnify and protect, defend, and hold harmless Miami Shores Village, the Florida Department of Transportation and its respective employees, agents

officials, officers, representatives, contractors and subcontractors, successors, and assigns (hereafter the from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses, liabilities, assessments, fines, penalties charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitations and attorney's fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the use, handling, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of a Hazardous Substance (excluding asbestos) on, under, from, to or about the Premises or any other activity carried on or undertaken on or off the Premises by the Contractor or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transport, decontamination, cleanup, disposal and/or presence or any Hazardous Substance including asbestos located, transported, or present on, undue, from, to, or about the Premises. This indemnity is intended to be operable under 42 U.S.C. sections 9607, as amended, and any successor section.

9.20.4 The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (I) the costs of removal or remedial action incurred by the United States government or the State of Florida or response costs incurred by any other person, or damages from injury to destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, response costs, or penalties which arise from the provisions of any other statute, law, regulation, code ordinance, or legal requirement state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

9.21 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any other reason or allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the Village, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the Village and the Contractor.

9.22 No Liens: If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or claim against any monies due or to become due from the Village to Contractor or from Contractor to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any Change Order,

Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within twenty (20) days of the filing or from receipt of written notice from the Village.

9.22.1 Additionally, until such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor, or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged, shall be held by Village as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining such. If Contractor shall fail to do so, Village shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means Village chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments.

9.23 Weather Emergencies: Upon issuance of a Hurricane Watch by the National Weather Service, the Contractor shall submit to the Village a plan to secure the work area in the event a Hurricane Warning is issued. The plan shall detail how the Contractor will secure the Premises, equipment and materials in a manner as to prevent damage to the Work and prevent materials and equipment from becoming a hazard to persons and property on and around the Premises. The plan shall include a time schedule required to accomplish the hurricane preparations and a list of emergency contacts that will be available and in the Village before, during and immediately after the storm.

Upon issuance of a Hurricane Warning by the National Weather Service, if the Contractor has not already done so, the Contractor shall implement its hurricane preparedness plan. Cost of development and implementation of the hurricane preparedness plan shall be considered as incidental to construction. Cost of any clean up and rework required after the storm will be considered normal construction risk within Florida and shall not entitle the Contractor to any additional compensation. Contractor shall be entitled to request an extension in time for completion of the Work, in accordance with the provisions of Article 23 of this Agreement, equal to the time he is shut down for implementation of the preparedness plan, the duration of the storm and a reasonable period to restore the Premises.

9.24 Force Majeure: No Party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purposes, such acts or circumstances shall include, but not be limited to weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties arising therefrom and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

9.24.1 Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

9.24.2 No Party shall be liable for its failure to carry out its obligations under the Agreement during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

9.24.3 The Contractor further agrees and stipulates, that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a

Force Majeure delay has commenced within 96 hours after such an occurrence. The CONTRACTOR shall use its reasonable efforts to minimize such delays. The CONTRACTOR shall promptly provide an estimate of the anticipated additional time required to complete the Project.

9.25 Patent Fee and Royalties: The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work, or any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The Contractor hereby expressly binds himself or itself to indemnify and save harmless the Village from all such claims and fees and from any and all suits and action of every name and description that may be brought against Village on account of any such claims, fees, royalties, or costs for any such invention or patent, and from any and all suits or actions that may be brought against said Village for the infringement of any and all patents or patent rights claimed by any person, firm corporation or other entity.

#### **ARTICLE 10.0 – VILLAGES'S RESPONSIBILITIES**

10.1 The Village shall furnish the data required of the Village under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due as provided in Article 8.

10.2.1 The Village's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in the Contract Documents.

10.3 Technical Clarifications and Interpretations:

10.3.1 The Village shall issue, with reasonable promptness, such written clarifications or interpretations of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should the Contractor fail to request interpretation of questionable items in the Contract Documents, the Village shall not entertain any excuse for failure to execute the Work in a satisfactory manner.

10.3.2 The Village shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other Party but in no event later than five (5) days after the occurrence of event, and written supporting data will be submitted to the other Party within five (5) days after such occurrence. All written decisions of the Village on any claim or dispute will be final and binding.

10.4 The Contractor shall perform all Work to the reasonable satisfaction of the Village in accordance with the Contract Documents. In cases of disagreement or ambiguity, the Village shall decide all questions, difficulties, and disputes of whatever nature, which may arise under or by reason of this Agreement or the quality, amount and value of the Work, and the Village's decisions on all claims, questions and determination are final.

#### **ARTICLE 11.0 SUBLET AND ASSIGNING OF CONTRACTS**

11.1 The Contractor shall not assign or transfer this Agreement or its rights, title or interests. The obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Paragraph shall constitute a material breach

of Agreement by the Contractor and the Village any, at its discretion, cancel this Agreement and all rights, title and interest of the Contractor which shall immediately cease and terminate.

11.2 The Contractor may subcontract a portion of the work, but shall perform with its own organization work amounting to not less than 40% of the total Contract amount.

## **ARTICLE 12.0 APPROVED PRODUCT LIST**

12.1 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 use of APL items to those listed on the APL effective at the time of placement. Where the terms Qualified Products List (QPL) appear in the Contract Documents, they will be synonymous with Approved Product List (APL).

Manufacturers seeking to have a product evaluated for the APL must submit an application, available on the Department's website at the following:

URL:<https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm>.

Applications must include the following documentation:

1. Supporting documentation as required by the Specifications, Standard Plans, and APL approval process. A sample may be requested to verify the product, in accordance with the specifications.
2. A photograph displaying the product as shipped with packaging.
3. A list displaying all components within the shipped packaging, if applicable.
4. Installation instructions and materials, if applicable.
5. Product packaging or product labels as required by the Specifications.
6. Construction material percentages and country source of materials.
7. Last two manufacturing steps and country of manufacture.
8. Manufacturer name and material designation (product name, product model/part number/style number, etc.) must be as identified on the product, product packaging, and product labels.
9. Applications must be signed by a legally responsible person employed by the manufacturer of the product.

12.2 Required test reports must be conducted by an independent laboratory or other independent testing facility. Required drawings and calculations must be signed and sealed by a Professional ENGINEER licensed in the State of Florida.

12.3 Products that have successfully completed the Department's evaluation process are eligible for inclusion on the APL. Manufacturers are required to submit requests to the Department for approval of any modifications or alterations made to a product listed on the APL. This includes, but is not limited to, design, raw material, or manufacturing process modifications. Modification or alteration

requests must be submitted along with supporting documentation that the product continues to meet the Specification, or Standard Plans requirements. A product sample and additional product testing and documentation may be required for the modification evaluation. Any marked variations from original test values, failure to notify the Department of any modifications or alterations, or any evidence of inadequate performance of a product may result in removal of the product from the APL.

12.4 Manufacturers must submit supporting documentation to the Department for a periodic review and re-approval of their APL products on or before the product's original approval anniversary. APL products that are not re-approved may be removed from the APL.

### **ARTICLE 13.0 BUY AMERICA, BUY AMERICA ACT (BABA)**

13.1 Source of Supply: Comply with Section 70914 of Public Law No. 117-58, §§ 70901-52, also known as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, which includes the Build America, Buy America Act (BABA). Domestic compliance for all affected products will be listed on the APL.

13.1.1 **Steel and Iron**: Use steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through the final shaping and coating. If a steel or iron product is taken outside the United States for any manufacturing process, it becomes foreign source material. When using steel or iron materials as a component of any manufactured product (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply. Foreign steel and iron may be used when the total actual cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Submit a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that all steel or iron furnished or incorporated into the furnished product was produced and manufactured in the United States or a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual cost). Submit each such certification to the ENGINEER prior to incorporating the material or product into the project. Prior to the use of foreign steel or iron materials on a project, submit invoices to document the actual cost of such material, and obtain the ENGINEER's written approval prior to incorporating the material into the project.

13.1.2 **Manufactured Products**: Use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers.

13.1.3 **Construction Materials**: Use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

13.1.4 **Exemptions to Build America, Buy America**: Temporary devices, equipment, and other items removed at or before the completion of the project are exempt

from BABA funding eligibility requirements. Aggregates, cementitious materials, and aggregate binding agents or additives are exempted from BABA funding eligibility requirements.

13.2 Contaminated, Unfit, Hazardous, and Dangerous Materials: Do 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. Environmental Protection Agency (EPA). 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 (OSHA).

#### **ARTICLE 14.0 - LEGAL REQUIREMENTS AND RESPONSIBILITIES TO THE PUBLIC (FHWA 1273, WAGE RATES, E-VERIFY, TITLE VI, AND DBE)**

14.1 Compliance with FHWA 1273: Comply with the provisions contained in FHWA-1273. The FHWA-1273 Electronic Version, dated October, 23, 2023 is posted on the Department's website at the following URL address:  
<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

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

14.2 Davis-Bacon Act, as amended. Contractor must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors are required to pay wages to laborers and mechanics a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

In addition, Contractor is required to pay wages not less than once a week. The CONTRACTOR must place a copy of the current prevailing wage determination issued by the Department of Labor.

14.3 The CONTRACTOR must also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). As required by the Act, each contractor or sub recipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- A. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

14.4 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.

14.4.1 Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR must comply with the Employment Eligibility Verification Program ("E-Verify Program") developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. If applicable, in accordance with Subpart 22.18 of the Federal Acquisition Register. information on registration for and use of the E-Verify Program can be obtained via the internet at the Department Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

- A. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- B. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractors does not employ, consult with, or sub consult with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- C. Maintain copies of all subcontractor's affidavits for the duration of this Agreement and provide the same to the VILLAGE upon request;
- D. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- E. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- F. Be aware that if the VILLAGE terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the VILLAGE as a result of the termination of the Agreement.

14.5 EQUAL EMPLOYMENT During the performance of this Agreement or any related Work Order, the CONTRACTOR shall:

- A. Not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, handicap, or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during



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

- B. In all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, it must state that all qualified applicants will receive considerations for employment without regard to race, color, religion, age, sex, handicap, or national origin.

14.6 CONTRACT ASSURANCE The CONTRACTOR or Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts funded through the Florida Department of Transportation. Failure of the CONTRACTOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the VILLAGE deems appropriate. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 etseq.).

14.7 FDOT DBE Program The CONTRACTOR shall comply with the FDOT DBE Program.

- A. CONTRACTOR shall demonstrate good faith effort toward the utilization of certified Women / Minority Business Enterprise (W/MBE) and Small Local Business Enterprise (SLBE) subcontractors or suppliers.
- B. The CONTRACTOR shall report to the VILLAGE its subcontractors/suppliers solicited or utilized (Exhibit).
- C. At the time of the submission of invoices, the CONTRACTOR shall submit to the VILLAGE a report (Exhibit C) of all subcontractors, subcontractors or suppliers utilized with their final contract amounts and any other reports or forms as may be required by the VILLAGE.

## **ARTICLE 15 BONDS AND INSURANCE**

15.1 Public Construction and Other Bonds:

The Contractor shall furnish Public Construction or Performance and Payment Bonds ("Bond"), each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. These Bonds shall remain in effect until at least one (1) year after the date of final payment, except as otherwise provided by law. All Bonds shall be furnished and provided by the surety and shall be in substantially the same form as prescribed by the Contract Documents and be executed by such sureties as (i) are licensed to conduct business in the State of Florida, and (ii) are named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department and (iii) otherwise

meet the requirements set forth herein that apply to sureties. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

15.1.1 Performance Bond: The Contractor shall execute and record in the public records of Dade County, Florida a payment and performance bond in an amount at least equal to the Contract Price with a surety insurer authorized to do business in the State of Florida as surety ("Bond"), in accordance with Section 255.05, Florida Statutes (2014) as may be amended or revised, as security for faithful performance and payment of all of the Contractor's obligations under the Contract Documents.

A Corporate Surety Bond legally issued, meeting the approval of the Village in an amount not less than the Contract Price of such improvements, conditioned that the Contractor shall maintain and make all repairs to the improvements constructed by the Contractor at their own expense and free of charge to the Village, for the period of one (1) year after the date of acceptance of the Work within such period by reason of any imperfection of the material used or by reason of any defective workmanship, or any improper, imperfect or defective preparation of the base upon which any such improvement shall be laid.

15.1.2 Disqualification of Surety: If the Surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of clauses (I) and (ii) of Paragraph 15.1, the Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the Village.

## 15.2 Insurance

15.2.1 Contractor shall provide and shall require all of its sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Property Insurance (Builder's Risk), Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Umbrella/Excess Liability, as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. A Sample Insurance Certificate shall be included with the bid to demonstrate the firm's ability to comply with insurance requirements. Provide a previous certificate or other evidence listing the insurance companies' names for all required coverage, and the dollar amounts of coverage.

1. Miami Shores Village and the Florida Department of Transportation are required to be named as additional insured on the Commercial General Liability insurance policy. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.
2. The Contractor shall provide the Village an original Certificate of Insurance for policies required by Article 15. All certificates shall state that the Village shall be given ten (10) days' notice prior to expiration or cancellation of the policy. The

insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the Village, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 15 shall not be affected by any other policy of insurance, which the Village may carry in its ownname.

3. Contractor shall as a condition precedent of this Agreement, furnish to Miami Shores Village, c/o Project Manager 10050 N.E. 2<sup>ND</sup> Avenue, Miami Shores, Florida 33138. Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

15.2.2 Property Insurance (Builder's Risk): The Contractor shall purchase and maintain property insurance upon the Work at or off the site of 100% of the contract completed value. These policies shall insure the interest of the owner, contractor and subcontractors in the Work, and shall insure against "all risks" of physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Work is completed and accepted by the Village.

15.2.3 Commercial General Liability

15.2.3.1 Limits of Liability:

Bodily Injury and Property Damage - Combined Single Limit

Each Occurrence	\$1,000,000
Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations	\$1,000,000

15.2.3.2 Endorsements Required:

Miami Shores Village included as an Additional Insured  
 Broad Form Contractual Liability  
 Waiver of Subrogation Premises/Operations  
 Products/Completed  
 Operations Independent Contractors Owners  
 and Contractors Protective Liability Contractors  
 Pollution Liability

15.2.4 Business Automobile Liability

15.2.4.1 Limits of Liability:

Bodily Injury and Property Damage - Combined Single Limit

All Autos used in completing the contract Including Hired, Borrowed or

Non- Owned Autos

Any One Accident \$1,000,000

15.2.4.2 Endorsements Required:  
Waiver of Subrogation

15.2.5 Workers' Compensation and Employer's Liability Insurance

Limits: Workers' Compensation – Per Florida Statute 440 Employers' Liability - \$500,000

Any firm performing work on behalf of Miami Shores Village must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Law.

Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act.

15.2.6 Umbrella/Excess Liability: The Contractor shall provide umbrella/excess coverage with limits of no less than \$2,000,000 excess of Commercial General Liability, Automobile Liability and Employer's Liability.

15.2.7 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Village's Risk Manager. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

NOTE: MIAMI SHORES VILLAGE BID NUMBER MUST APPEAR ON EACH CERTIFICATE.

Compliance with the foregoing requirements shall not relieve the Contractor of their liability and obligation under this section or under any other section of this Agreement.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the Village at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the Village shall:

15.2.7.1 Suspend the Agreement until such time as the new or renewed certificates are received by the Village.

15.2.7.2 The Village may, at its sole discretion, terminate the Agreement for cause and seek damages from the Contractor in conjunction with the violation of the terms and conditions of the Agreement.

**ARTICLE 16 - WARRANTY AND GUARANTEE, TESTS AND INSPECTIONS, CORRECTION, REMOVAL  
OR ACCEPTANCE OF DEFECTIVE WORK**

16.1 Warranty: The Contractor warrants and guarantees to the Village that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted as provided in this Article.

16.1.1 Warranty of Title: The Contractor warrants to the Village that it possesses good, clear and marketable title to all equipment and materials provided and that there is no pending liens, claims or encumbrances against the equipment and materials.

16.1.2 Warranty of Specifications: The Contractor warrants that all equipment, materials and workmanship furnished, whether furnished by the Contractor, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

16.1.3 Warranty of Merchantability: The Contractor warrants that any and all equipment to be supplied pursuant to this Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.

16.2 Tests and Inspections: The Contractor shall give the Project Manager timely (minimum of thirty-six (36) hours) notice of readiness of the Work for all required inspections, tests, or approvals.

16.2.1 If any law, ordinance, rule, regulation, code or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the Village's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation of the Work.

16.2.2 All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by the Village or by a professional testing firm designated by the Village. The Village will pay for sampling and testing if the test results are passing. The Contractor will reimburse the Village for sampling, testing, and retesting costs associated with failing tests.

16.2.3 Neither observations by the Project Manager nor inspections, tests or approvals by others shall relieve the Contractor from his obligations to perform the Work in accordance with Contract Documents.

16.3 Uncovering Work: If any work that is to be inspected, tested or approved is covered without approval or consent of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation and/or testing. Such uncovering and replacement shall be at the Contractor's sole expense unless the Contractor has given the Project Manager timely notice of the Contractor's intention to cover such Work and the Project Manager has not acted with reasonable promptness in response to such notice.

16.3.1 If the Project Manager considers it necessary or advisable that Work covered in accordance with Article 16 be observed by the Village or inspected or tested by others, the Contractor at the Village's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection testing and reconstruction if he makes a claim therefore as provided in Articles 16

16.4 Village May Stop the Work: If the Work is defective, or the Contractor fails to supply sufficient skilled supervisory personnel or workmen or suitable materials or equipment or the work area is deemed unsafe, the Village may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Village to stop the Work shall not give rise to any duty on the part of the Village to exercise this right for the benefit of the Contractor or any other party.

The Village will not award any increase in Contract Price or Contract Time if the Work is stopped due to the circumstances described herein.

16.5 Correction or Removal of Defective Work Before Final Payment: If required by the Project Manager, the Contractor shall promptly, without cost to the Village and as Specified by the Project Manager, either correct any defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by the remove it from the site and replace it with non-defective Work.

16.6 One Year Correction Period After Final Payment: If within one (1) year after the date of final acceptance, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the Village and in accordance with the Village's written instructions, either correct such defective Work, or, if it has been rejected by the Village, remove it from the site and replace it with non-defective Work.

If The Contractor does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the Village may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs for such removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

16.7 Acceptance of Defective Work, Deductions: If, instead of requiring correction or removal and replacement of defective Work, the Village, at the Village's sole option, prefers to accept it, the Village may do so. In such a case, if acceptance occurs prior to the Project Manager's recommendation of final payments, a Change Order shall be issued incorporating the necessary revisions in the Contracts Documents, including appropriate reduction in the Contract Price; or if the acceptance occurs after such recommendation, an appropriate amount shall be paid by the Contractor to the Village.

16.8 Village May Correct Defective Work: If the Contractor fails within a reasonable time after written notice of the Project Manager to proceed to correct defective Work or to remove and replace rejected Work as required by the Project Manager, or if the Contractor fails to perform the Work in accordance

with the Contract Documents, the Village may, after seven (7) days written notice to the Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph, the Village shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Village may exclude the Contractor from all or part of the site, take possession of all or part of the Work, suspend the Contractor's services related thereto and take possession of the Contractor's tools, construction equipment and materials stored at the site or elsewhere. The Contractor shall allow the Village's representative agents and employees such access to the site as may be necessary to enable the Village to exercise its rights under this paragraph. All direct and indirect costs of the Village in exercising such rights shall be charged against the Contractor in an amount verified by the Project Manager, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Work. The Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the Village of the Village's right hereunder.

## **ARTICLE 17 INDEMNIFICATION**

17.1 Disclaimer of Liability: The Village shall not at any time, be liable for injury or damage occurring to any person or property from any cause, whatsoever, arising out of Contractor's construction and fulfillment of this agreement.

17.2 Indemnification: For other, additional good valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

17.2.1 Contractor shall, at its sole cost and expense, indemnify and hold harmless the Village, its representatives, employees and elected and appointed officials from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential including but not limited to fees and charges of engineers, architects, attorneys, CONTRACTORS and other professionals and court costs arising out of or in consequence of the performance of this Agreement at all trial and appellate levels. Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) the negligent or defective design of the project and Work of this Agreement; (b) any act, omission or default of the Contractor, its Subcontractors, agents, servants or employees; (c) any and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (f) the use of any improper materials; (g) any construction defect including both patent and latent defects; (h) failure to timely complete the work; (i) The violation of any federal, state, county or Village laws, ordinances or regulations by Contractor, its subcontractors, agents, servants, independent contractors or employees; (j) the breach or alleged breach by Contractor of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee.

17.2.2 Contractor agrees to indemnify, defend, save and hold harmless the Village, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against Village, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

17.2.3 Contractor shall pay all claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs for trials and appeals.

17.2.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements thereon or make a claim against any monies due or to become due from the Village to Contractor or from Contractor to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) days of the filing or from receipt of written notice from the Village.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor, or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged, shall be held by Village as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If Contractor shall fail to do so, Village shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means Village chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to Contractor. In the event the amount due Contractor is less than the amount required to satisfy Contractor's obligation under this, or any other article, paragraph or section of this Agreement, the Contractor shall be liable for the deficiency due the Village.

17.2.5 The Contractor and the Village agree that Section 725.06(2), Florida Statutes controls the extent and limits of the indemnification and hold harmless provisions of this Agreement, if any, and that the parties waive any defects in the wording of this Article that runs afoul of said statutory section.

## **ARTICLE 18. DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

18.1 During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

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



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

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

#### ARTICLE 19. SUSPENSIONS OF WORK ORDERED BY THE ENGINEER.

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

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

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

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

#### ARTICLE 20. SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK.

20.1 The ENGINEER reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

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

20.3 If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

20.4 The term "significant change" shall be construed to apply only to the following circumstances:

- (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

**ARTICLE 21. EQUIPMENT RENTAL RATES**

21.1 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) Adjustment Factors x 100%.
- (2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.
- (3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- (4) Standby Rate= Allowable Hourly Equipment Rate x 50%.
- (5) Allowable Hourly Equipment Rate= Monthly Rate/176 x The Monthly Rate is The Basic Machine Rate Plus Any Attachments.

21.2 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 workdays on the project.

The VILLAGE 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 VILLAGE 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.

**ARTICLE 22 CHANGE OF CONTRACT PRICE**

Change of Contract Price, approved by VILLAGE, shall be computed as follows:

22.1 Cost of the Work: The term "Cost of the Work" means the sum of all direct costs necessarily

incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Village, these costs shall be in amounts no higher than those prevailing in the Village and shall include only the following items:

- 22.1.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the Village and the Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus and cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.
- 22.1.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the Village, and the Contractor shall make provisions so that they may be obtained.
- 22.1.3 Supplemental costs including the following:
  - 22.1.3.1 Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work.
  - 22.1.3.2 Rentals of all construction equipment and machinery and the parts whether rented from the Contractor or others in accordance with rental agreements approved by the Village, and the costs of transporting, loading, unloading, installation, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work. Sales, consumer, use or similar taxes related to the Work and for which the Contractor is liable, imposed by laws and regulations.
  - 22.1.3.3 Royalty payments and fees for permits and licenses.
  - 22.1.3.4 The cost of utilities, fuel and sanitary facilities at the Worksite.
  - 22.1.3.5 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
  - 22.1.3.6 Cost of premiums for additional bonds and insurance required because of changes in the Work.

22.2 The Contract Price may only be increased by a Change Order when Work is modified and approved by the VILLAGE in writing. Any claim for an increase in the Contract Price resulting from a Change Order shall be based on written notice delivered to the Project Manager within ten (10) days of the occurrence of the Change Order giving rise to the claim. Notice of the amount of the claim with supporting data shall be included in the Change Order and delivered within twenty (20) days of such occurrence unless Project Manager allows an additional period of time to ascertain accurate cost data. Any change in the Contract Price resulting from any such claim shall be incorporated in the Change

Order.

22.3 Not Included in the Cost of the Work: The term “cost of the Work” shall not include any of the following:

- 22.3.1 Payroll costs and other compensation of the Contractor’s officer’s executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditor, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the Contractor whether at the site or in the Contractor’s principal or branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications all of which are to be considered administrative costs covered by the Contractor’s fee.
- 22.3.2 Expenses of the Contractor’s principal and branch offices other than the Contractor’s office at the site.
- 22.3.3 Any part of the Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work and charges against the Contractor for delinquent payments.
- 22.3.4 Cost of premiums for all bonds and for all insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same.
- 22.3.5 Costs due to the negligence of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

22.4 Cost Breakdown Required: Whenever the cost of any Work is to be determined pursuant to this Article, the Contractor will submit in form acceptable to the Village an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-charge- in- cost, the Contractor shall submit an estimate substantiated by a complete itemized breakdown:

- 22.4.1 The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.
- 22.4.2 Whenever a change involves the Contractor and one (1) or more subcontractors and the change is an increase in the agreed compensation, the overhead and profit percentage for the Contractor and each subcontractor shall be itemized separately.

22.5 Time for the Village to Approve Extra Work: Extra Work exceeding the cumulative amount of \$25,000 for a specific project must be approved by the Village Council and a written Change Order proposal must be submitted to the Public Works Director for submittal and approval by the Village Manager and Village Council. No financial or time claim for delay to the project resulting from the Change Order approval process outlined under Article 23 will be allowed.

## ARTICLE 23 CHANGE OF THE CONTRACT TIMES

23.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Project Manager within five (5) days

of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

23.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if a claim is made there for as provided. Such delays shall include but not be limited to, acts or neglect by the Village, Orto fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

23.3 All time limits stated in the Contract Documents are of the essence. The provisions of this Article 24 shall not exclude recovery for damages for delay by the Contractor.

23.4 Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the CONTRACTOR (non-affiliated Contractors) shall not give rise to a claim by the CONTRACTOR for damages for increases in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the Village's contractors and subcontractors, Florida Power and Light Company, AT&T and Florida East Coast Railway, LLC.

#### ARTICLE 24 LIQUIDATED DAMAGES

24.1 Upon failure of the Contractor to complete the Work within the time specified for completion, the Contractor shall pay to the Village the sum of one thousand six hundred eighty-five (\$1,685) for each and every calendar day that the completion of the Work is delayed beyond the time specified in this Agreement for completion, as fixed and agreed liquidated damages and not as a penalty, so long as the delay is caused by the Contractor.

24.2 Amount of Liquidated Damages: Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge Per Calendar Day
\$299,999 and under.....	\$904
\$300,000 but less than \$2,000,000.....	\$1,685
\$2,000,000 but less than \$5,000,000.....	\$2,667
\$5,000,000 but less than \$10,000,000.....	\$3,813
\$10,000,000 but less than \$20,000,000.....	\$5,021
\$20,000,000 but less than \$40,000,000.....	\$7,442
\$40,000,000 and over \$10,224 plus 0.00005 of any amount over \$40 million (Round to nearest whole dollar)	

24.2.1 The ENGINEER may approve adjustments to the liquidated damages amounts in accordance with the Construction Project Administration Manual (CPAM) provided all contract work is complete.

24.3 Should an act of God or the acts or omissions of the Village, its agents or representatives, in derogation to the terms of this Agreement cause the delay, the Contractor shall not be responsible for the delay nor liquidated damages. Liquidated damages are fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the Village as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of damages and the cost and effect of the failure of the Contractor to complete the Work on time. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given.

24.4 The Village shall have the right to deduct from or retain any compensation which may be due or which may become due and payable to the Contractor the amount of liquidated damages, and if the amount retained by the Village is insufficient to pay in full such liquidated damages, the Contractor shall pay all liquidated damages in full. The Contractor shall be responsible for reimbursing the Village, in addition to liquidated damages or other damages for delay, for all costs of engineering, architectural fees, and inspection and other costs incurred in administering the construction of the Project beyond the completion date specified or beyond an approved extension of time granted to the Contractor whichever is later. Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the Contractor shall not give rise to a claim by Contractor for damages for increase in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the Village's contractors and subcontractors, Florida Power and Light Company, AT&T, and Florida East Coast Railway, LLC.

24.5 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the Village, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the Village and the Contractor.

## ARTICLE 25 - SUSPENSION OF WORK AND TERMINATION

25.1 Village May Suspend Work: The Village may, at any time and without cause, suspend the Work or any portion of the Work for a period of not more than ninety (90) days by notice in writing to the Contractor which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension, if the Contractor makes a claim as provided in Articles 18 and 20.

25.2 Village May Terminate Work: The Village retains the right to terminate this Agreement, with thirty (30) days prior written notice. Additionally, the Village may also terminate this Agreement upon 15 days' notice upon the occurrence of any one or more of the following events:

- 25.2.1 If the Contractor commences a voluntary case or a petition is filed against the Contractor, under any chapter of the Bankruptcy Code, or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.
- 25.2.2 If the Contractor makes a general assignment for the benefit of creditors.
- 25.2.3 If a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors.
- 25.2.4 If the Contractor persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled

Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.

- 25.2.5 If the Contractor repeatedly fails to make prompt payments to subcontractors or for labor, material or equipment.
- 25.2.6 If the Contractor repeatedly disregards proper safety procedures.
- 25.2.7 If the Contractor disregards any local, state or federal laws or regulations.
- 25.2.8 If the Contractor otherwise violates any provisions of this Agreement.
- 25.2.9 Loss of Funding: The Agreement shall remain in full force and effect only as long as receipt of LAP grant funding provided for in the Agreement has been appropriated by Miami Shores Village Council in the annual budget for the fiscal year of this Agreement. The Agreement is subject to termination based on a lack of funding.

25.3 If the Contractor, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, the Village may exclude the Contractor from the Work site and take the prosecution of the Work out of the hands of the Contractor, and take possession of the Work and all of the Contractor's tools, appliances, construction equipment and machinery at the site and use them without liability to the Village for trespass or conversion, incorporate in the Work all materials and equipment stored at the site or for which the Village has paid the Contractor but which are stored elsewhere. And Further, the Contractor may be excluded from the Work site and the Village take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use them without liability to the Village for trespass or conversion, incorporate in the Work all materials and equipment stored at the site or for which the Village has paid the Contractor but which are stored elsewhere, and finish the Work as the Village may deem expedient. In this instance, the Contractor shall not be entitled to receive any further compensation until the Work is finished.

25.3.1 If after notice of termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of the Village and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience Clause as set forth in Section 25.5 below.

25.3.2 Upon receipt of Notice of Termination, Contractor shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to Village all data, drawings, specifications reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

25.4 If the Contractor commits a default due to its insolvency or bankruptcy, the following shall apply:

25.4.1 Should this Agreement be entered into and fully executed by the parties, funds released and the Contractor (Debtor) files for bankruptcy, the following shall occur:

25.4.1.1 In the event the Contractor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Contractor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the Village. The Contractor further agrees that in the event of this default, the Village shall,

at its option, be entitled to seek relief from the automatic stay pursuant to 11 U.S.C. 362. The Village shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d) (1) or (d) (2), and the Contactor agrees to waive the notice provisions in effect pursuant to 11

U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Contactor acknowledges that such waiver is done knowingly and voluntarily.

- 25.4.1.2 Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Contractor acknowledges that this Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c) (2), unless the Village expressly consents in writing to the assumption. In the event the Village consents to the assumption, the Contractor agrees to file a motion to assume this Agreement within ten (10) days after receipt of written consent from the Village, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Contractor further acknowledges that this Agreement is not capable of being assigned pursuant to U.S.C. 365(b) (1).

25.5 Termination for Convenience: This Contract may be terminated for convenience in writing by Village upon thirty (30) days written notice to Contractor (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all work executed and expenses incurred prior to termination. In addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work/services satisfactorily performed. No payment shall be made for profit for work/services which have not been performed.

25.6 by Where the Contractor's service has been so terminated the Village, the termination shall not affect any rights of the Village against the contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the Village will not release the Contractor from liability.

25.7 The Contractor has no right, authority or ability to terminate the Work except for the wrongful withholding of any payments due the Contractor from the Village.

## ARTICLE 26 DISPUTE RESOLUTION

26.1 Resolution of Disputes: Questions, claims, difficulties and disputes of whatever nature which may arise to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents which cannot be resolved by mutual agreement of the Contract Administrator and Contractor shall be submitted to the CONTRACTOR for resolution. When either party has determined that a disputed question, claim, difficulty or dispute is at an impasse, that party shall notify the other party in writing and submit question, claim, difficulty or dispute to the CONTRACTOR for resolution. The parties may agree to a proposed resolution at any time without the involvement and determination of the CONTRACTOR.



- 26.1.1 CONTRACTOR shall notify Contract Administrator and Contractor in writing of CONTRACTOR's decision within twenty-one (21) calendar days from the date of the submission of the question, claim, difficulty or dispute, unless CONTRACTOR requires time to gather information or allow the parties to provide additional information.
- 26.1.2 In the event the determination of a dispute by the CONTRACTOR under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party and the Village Manager, in writing within ten (10) days after receipt of the determination. The notice must state the basis of the objection and the proposed resolution. Final resolution of such dispute shall be made by the Village Manager. The Village Manager's decision shall be final and binding on the parties.
- 26.1.3 All non-technical administrative disputes (such as billing and payment) shall be determined by Contract Administrator.
- 26.1.4 During the dependency of any dispute and after a determination thereof, Contractor, CONTRACTOR, and Contract Administrator shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. During the dependency of any dispute arising under this Agreement, other than termination herein, Contractor shall carry on the Work and adhere to the progress. The Work shall not be delayed or postpone pending resolution of any disputes or disagreements.
- 26.1.5 For any disputes which remain unsolved, within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all unresolved disputes. A mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies under applicable law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under applicable law.

#### ARTICLES 27 - NOTICES

- 27.1 All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the Village:

Village Manager's Office  
Miami Shores Village Hall  
10050 N.E. 2nd Avenue  
Miami Shores, FL 33138  
Telephone No. (305) 762-4851  
Email: ScottE@msvfl.gov

Office of the Village Attorney  
Miami Shores Village Hall  
10050 N.E. 2nd Avenue  
Miami Shores, FL 33138  
Email: Village Attorney@msvfl.gov

With copy to the:

Project Manager  
Miami Shores Public Works  
10050 N.E. 2nd Avenue  
Miami Shores, FL 33138  
Telephone No. (305) 795-2210  
Email: RuizF@msvfl.gov

To the Contractor:

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

## **ARTICLE 28    LIMITATION OF LIABILITY**

28.1 The Village desires to enter into this Agreement only if in so doing the Village can place a limit on the Village's liability for any cause of action arising out of this Agreement, so that the Village's liability for any breach never exceeds the sum of \$1,000. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the Village to any action or claim arising from the Agreement is limited to a maximum amount of \$1,000, which amount shall be reduced by the amount actually paid by the Village to the Contractor pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended either to be a waiver of the limitation placed upon the Village's liability as set forth in Section 768.28, Florida Statutes, or to extend the Village's liability beyond the limits established in said Section 768.28; and no claim or award against the Village shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

28.2 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the Village, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the Village and the Contractor.

## **ARTICLE 29. RECORDS.**

29.1 Records for Personnel Expenses shall be kept on a generally recognized accounting basis and shall be available to the VILLAGE or its authorized representative at mutually convenient times. With respect to all matters covered by this Agreement, records will be made available for Examination, audit, inspection, or copying purposes at any time during normal business hours at location within Miami Dade County, Florida

as often as the VILLAGE, FDOT representatives of the Comptroller General of the United States or other federal agency may reasonably require. CONTRACTOR will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement. The VILLAGE's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency, whether local, state or federal. CONTRACTOR shall retain all records and supporting documentation applicable to this Agreement for five (5) years from final payment and the date of submission of the annual performance report. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or the end of the required period, whichever is later.

### **ARTICLE 30 GOVERNING LAW**

30.1 This Agreement shall be governed by the laws of the State of Florida. Both Parties agree that the courts of the State of Florida shall have jurisdiction of any claim arising in connection with this Agreement. Venue for any claim, objection or dispute arising out of this Agreement shall be in Miami Dade County, Florida. By entering into this Contract, Contractor and Village hereby expressly waive any rights either party may have to a trial by jury or any civil litigation related to, or arising out of the Project. Contractor shall specifically bind all subcontractors to the provisions of this Contract.

### **ARTICLE 31. COMPLIANCE WITH LAWS**

- A. The CONTRACTOR shall comply with the applicable requirements of State laws and all Codes and Ordinances of Miami Shores Village as amended from time to time, together with keeping and maintaining in full force and effect during the term of this Agreement all licenses and certificates of authorization required pursuant to applicable law, including without limitation those required by Chapters 471, 481, and 489, Florida Statutes.
- B. If the PROJECT involves E.P.A. Grant eligible work, the VILLAGE and the CONTRACTOR agree that the provisions of 40 CFR, Part 35, Appendix C-1, shall become a part of this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement for work performed under said Agreement.
- C. If the PROJECT involves work under other Federal or State Grantors or Approving Agencies, the VILLAGE and the CONTRACTOR shall review and approve the applicable required provisions or any other supplemental provisions as may be included in the Agreement.
- D. Any documents provided by CONTRACTOR to the VILLAGE are public records and the VILLAGE may authorize third parties to review and reproduce such documents pursuant to public records laws, including the provisions of Chapter 119, Florida Statutes

## ARTICLE 32 MISCELLANEOUS

32.1 The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon the Contractor and all of the rights and remedies available to the Village, 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, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of this Agreement.

32.2 The Contractor and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be constructed to create a partnership, association or any other kind of joint undertaking or venture between the Parties.

32.3 The Village reserves the right to audit the records of the Contractor relating in any way to the Work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by the Village. If required by the Village, the Contractor agrees to submit to an audit by an independent certified public accountant selected by the Village. The Contractor shall allow the Village to inspect, examine and review the records of the Contractor at any and all times during normal business hours during the term of this Agreement.

32.4 The remedies expressly provided in this Agreement to the Village shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of the Village now or later existing at law or inequity.

32.5 Should any part, term or provisions of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.

32.6 Prohibition Against Contracting With Scrutinized Companies: Subject to *Ode Brecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Ode Brecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2016), as may be amended or revised. The Village may terminate this Agreement at the Village's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2016), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2016), as may be amended or revised.

### ARTICLE 33. CONTRACTOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

33.1 Pursuant to Section 119.0701 of the Florida Statutes, CONTRACTOR agrees to:

- A. Keep and maintain public records in CONTRACTOR's possession or control in connection with CONTRACTOR's performance under this agreement for five (5) years following final payment. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the VILLAGE.
- B. Upon request from the Village's custodian of public records, CONTRACTOR shall provide the VILLAGE with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the VILLAGE. Notwithstanding, it is understood that at all times CONTRACTOR's work papers shall remain the sole property of CONTRACTOR, and are not subject to the terms of this Agreement.
- D. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of CONTRACTOR shall be delivered by CONTRACTOR to the VILLAGE Manager, at no cost to the VILLAGE, within seven (7) days. All such records stored electronically by CONTRACTOR shall be delivered to the VILLAGE in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, CONTRACTOR shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that CONTRACTOR will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
- E. Any compensation due to CONTRACTOR shall be withheld until all records are received as provided herein.
- F. CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the VILLAGE.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (TELE NUMBER: 305-762- 4870, E-MAIL ADDRESS: [RODRIGUEZY@MSVFL.GOV.](mailto:RODRIGUEZY@MSVFL.GOV.), AND MAILING ADDRESS: MIAMI SHORES VILLAGE HALL 10050 N.E. 2ND AVE., MIAMI SHORES, FL 33138.**

**ARTICLE 34. TERMS FOR COMPLIANCE WITH FEDERAL AID CONTRACTS**

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

- A. **COMPLIANCE WITH REGULATIONS:** The CONTRACTOR shall comply with the regulations of the State of Florida, Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the Agreement.
- B. **NONDISCRIMINATION:** The CONTRACTOR, with regard to the work performed after award and prior to completion of the Services, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of sub-CONTRACTORS, including procurements of material and leases of equipment. The CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- C. **SOLICITATIONS FOR SUBCONTRACTS INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT:** In all solicitations made by competitive bidding or negotiations made by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential sub-CONTRACTOR, supplier or lessor shall be notified by the CONTRACTOR of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- D. **INFORMATION AND REPORTS:** The CONTRACTOR will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Miami Shores Village and State of Florida, Department of Transportation to be pertinent to ascertain compliance with such Regulation, orders and instruction. Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall certify to Miami Shores Village and the State of Florida, Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - 2. Cancellation, termination or suspension of the contract, in whole or in part.

F. INCORPORATION OF PROVISIONS: The CONTRACTOR will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order or instructions issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontract or procurement as Miami Shores Village and the State of Florida, Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with litigation with a Sub-CONTRACTOR or supplier as a result of such direction, the CONTRACTOR may request the State to enter into such litigation to protect the interests of the State and in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

G. INTEREST OF MEMBERS OF CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.

H. Neither the Recipient nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Recipient or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Recipient, the Recipient, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Recipient or the locality relating to such contract, subcontract or arrangement. The Recipient shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

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

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

I. PARTICIPATION BY MINORITY BUSINESS ENTERPRISES: The CONTRACTOR shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent Agreements between the CONTRACTOR and any Sub- CONTRACTOR or CONTRACTOR.

1. POLICY: It is the policy of the State of Florida, Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds under this Agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this Agreement.

2. MINORITY BUSINESS ENTERPRISES OBLIGATION: The recipient or its CONTRACTOR agrees to ensure that Minority Business Enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to in the performance of agreements and subcontracts financed in whole

participate or in part with Federal Funds provided under this Agreement. In this regard, all recipients or CONTRACTORS shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, have the maximum opportunity to participate in the performance of agreements and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all recipients or CONTRACTORS shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Minority Business Enterprises have the maximum opportunity to compete for and perform agreements. Recipients and their CONTRACTORS shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted agreements.

- J. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- K. It is understood and agreed that if the CONTRACTOR at any time learns that the Certification it provided the VILLAGE in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONTRACTOR shall provide immediate written notice to the Village. It is further agreed that the clause titled Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction” as set forth in 49 CFR, Section 29.510, shall be included by the CONTRACTOR in all lower tier covered transactions and in all aforementioned Federal Regulations.
- L. The Village hereby certified that neither the CONTRACTOR nor the Contractor’s representative has been required by the VILLAGE, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement, to:
  - 1. Employ or retain, or agree to employ or retain, any form or person, or;
  - 2. Pay, or agree to pay, to any firm, person or organization any fee, contribution, donation or consideration of any kind;
- M. The VILLAGE further acknowledges that this Agreement will be furnished to the State of Florida, Department of Transportation in connection with this Agreement involving participation of Federal-Aid funds and is subject to applicable State and Federal Laws, both criminal and civil.
- N. The CONTRACTOR hereby certifies that it has not:
  - 1. Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration any firm or person (other than a bona fide employee working solely for the above CONTRACTOR) to solicit or secure this Agreement;
  - 2. Agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out this Agreement; or



3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above CONTRACTOR) any fee contribution, donation or consideration of any kind for or in connection with procuring or carrying out the Agreement.
  
- O. The CONTRACTOR further acknowledges that this Agreement will be furnished to the Department of Transportation, a Federal Agency, in connection with this Agreement involving participation of Federal-Aid funds and is subject to applicable State and Federal Laws, both criminal and civil.

**ARTICLE 35. NON-COERCIVE CONDUCT AFFIDAVIT.**

Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2) (a), Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

**ARTICLE 36. PROHIBITION ON CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN.**

If this contract contemplates the Village giving access to an individual's personal identifying information, then the following applies:

- A. Pursuant to Section 287.138, Florida Statutes, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria of Section 287.1838, Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 287.138, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

**ARTICLE 37. PERFORMANCE EVALUATION**

35.1 At the end of the contract, the VILLAGE will evaluate the CONTRACTOR'S performance. This evaluation will become public record.

**ARTICLE 38. ORDER OF PRECEDENCE**

36.1 In the event there is a conflict between this agreement, the ITB, CONTRACTOR'S response, or scope of the work, the order of precedence shall be this agreement, the ITB, and the CONTRACTOR'S RESPONSE. The village expressly rejects are additional terms or conditions not consistent with the terms herein.

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on this  
\_\_\_ day of \_\_\_\_\_, 2025

**CONTRACTOR**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

**MIAMI SHORES VILLAGE**

\_\_\_\_\_  
Esmond K. Scott, Village Manager

\_\_\_\_\_  
Date

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Weiss Serota Helfman Cole + Bierman P.L.  
Village Attorney  
Attest:

\_\_\_\_\_  
Ysabely Rodriguez, Village Clerk

Village Seal

# EXHIBIT “A”

ITB 2024-12-02

# EXHIBIT “B”

Contractor's Bid Response 2024-12-02

# EXHIBIT “C”

**DBE Utilization**

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

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

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

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information.

**DBE Reporting**

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

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

**Bid Opportunity List**

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

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within 3 business days of submission of the bid or proposal for ALL subcontractors or sub-consultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is: <https://www.fdot.gov/equalopportunity/eoc.shtm>

### **DBE/AA Plans**

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

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a (1) three-year period and should be updated at any time there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

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

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

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

**EXHIBIT “D”**

**FHWA 1273**



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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

**ATTACHMENTS**

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

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION** (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

#### **10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of 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, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

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

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

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

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

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

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). 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.

(4) 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 will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker ( e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

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

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

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* 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.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **VII. SAFETY: ACCIDENT PREVENTION**

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

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

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

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

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract), "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\* \* \* \* \*

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\*\*\*\*\*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

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

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\* \* \* \* \*

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

\* \* \* \* \*

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

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

#### **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading 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 paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

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

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

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

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

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

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

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

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

# EXHIBIT “E”

PERFORMANCE AND PAYMENT BOND





The Principal and Surety jointly and severally agree to pay to the Village any difference between the sum to which the said Principal would be entitled on the completion of the Contract, and that sum which the Village may be obliged to pay for the completion of said work by Contract or otherwise, and any damages, direct or indirect or consequential, which the Village may sustain on account of such work, or on account of the failure of said CONTRACTOR to properly and in all things, keep and execute all of the provisions of said Contract, and any expenses, including court costs and reasonable attorney fees (both trial and appellate), incurred by the Village in enforcing the terms of this Bond.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive Notice of any change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No right of action shall accrue on this Bond to or for use of any person or corporation other than the Village named herein and those persons or corporations provided for by Section 255.05, Florida Statutes, or their heirs, executors, administrators, successors or assigns.

The surety represents and warrants to the Village that they have a Best's Key Rating Guide General Policyholder's Rating of "\_\_\_" and Financial Category of "Class \_\_\_\_\_".

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_ 2025, A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two Witnesses required).

(If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

\_\_\_\_\_

(Affix Seal)

Signature of Authorized Officer

WITNESSES:

\_\_\_\_\_

Title

\_\_\_\_\_

Business Address

City, State

SURETY:

WITNESS:

Corporate Surety

\_\_\_\_\_

(Affix Seal)

Attorney-in-Fact

\_\_\_\_\_

Business Address

City, State

\_\_\_\_\_  
Name of Local Insurance Agency

EXHIBIT "F"  
Disclosure of Lobbying Activities  
375-030-33  
375-030-34

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES  
ON FEDERAL-AID CONTRACTS  
(Compliance with 49CFR, Section 20.100 (b))**

375-030-33  
PROCUREMENT  
01/24

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Name of Consultant: \_\_\_\_\_

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

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DISCLOSURE OF LOBBYING ACTIVITIES**

375-030-34  
 PROCUREMENT  
 02/16

Is this form applicable to your firm?  
 YES  NO   
 If *no*, then please complete section 4  
 below for "Prime"

<b>1. Type of Federal Action:</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing b. material change <b>For Material Change Only:</b> Year: _____ Quarter: _____ Date of last report: _____ (mm/dd/yyyy)
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : _____ _____ _____ Congressional District, <i>if known</i> : 4c _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b> _____ _____ _____ Congressional District, <i>if known</i> : _____	
<b>6. Federal Department/Agency:</b> _____ _____	<b>7. Federal Program Name/Description:</b> _____ _____ CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i> _____ _____ _____	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> _____ _____ _____	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date (mm/dd/yyyy): _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the fullname, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

EXHIBIT "G"  
Project Completion and Fee Schedule of  
Values